

Exhibit B

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individuals, on behalf of themselves and all others
similarly situated

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NO. CV 15-8047-JFW (Ex)
Dept: 16
Judge: The Honorable John F. Walter
FIRST AMENDED CLASS ACTION
COMPLAINT FOR DEFECTIVE
VEHICLES
DEMAND FOR JURY TRIAL

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1 This first amended complaint is brought by plaintiffs herein as a class action
2 complaint concerning purchasers or lessees of Corvette vehicles equipped with the
3 LS7 7.0LV8 engine concerning model years 2006 to 2013. Those vehicles have
4 exhibited excessive valve guide wear which has led to engine failures and
5 inspections and repairs.

INTRODUCTION

7 1. Plaintiffs bring this action for themselves and on behalf of all persons in
8 the United States, and in selected states, who purchased or leased Chevrolet Corvette
9 427 or Chevrolet Corvette Z06 vehicles (“class vehicles) which were manufactured,
10 distributed and sold by defendant General Motors LLC (hereinafter “defendant”
11 “New GM” or “GM”), or manufactured, distributed or sold by General Motors
12 Corporation (also known as Motors Liquidation Company) (“Old GM”).

13 2. GM widely advertised the 7.0 liter V8 engine which was used in the
14 Chevrolet Corvette 427 and Chevrolet Corvette Z06 vehicle from 2006 through 2014
15 as being of the highest quality and durability.

16 3. The above engine in the class vehicles was subject to excessive valve
17 guide wear, a condition which was well-known by Old GM and was known by
18 GM.

19 4. Because of defects in the design manufacture and assembly of these
20 subject engines installed in the class vehicles, the class vehicles, and their engines,
21 are by their nature susceptible to frequent mechanical failure, which has occurred.

22 5. The subject engines, when they fail, present a dire and significant safety
23 danger to the operator as oil leak suddenly and in volume underneath the vehicle,
24 under the rear tires which can lose traction, and subject to ignition, which engulfs the
25 vehicle in flames, all while depriving the operator of poor brakes and power steering.

26 6. Because of the defects in the design manufacture and assembly of the
27 subject engines installed in the class vehicles, owners and lessees of the class
28 vehicles have or will incur significant expense for inspection and/or repair of the

1 class vehicles.

2 7. Despite knowledge of the propensity of the subject engine to excessive
3 valve guide wear, **and the significant danger in operating the class vehicles, GM has**
4 **not issued a recall so that the class vehicles may be tested and repaired. This failure**
5 **to recall these defective and dangerous vehicles for this known defect has occurred**
6 **despite the recall by GM of all subject vehicles from 2006 to 2014, for at least two**
7 **other, less serious, defects.**

8 8. The defects which cause excessive valve guide wear are well-known
9 and have been actively discussed by GM and owners or lessees of the class vehicles.
10 Yet, GM has taken no steps to correct the deficiencies in the subject engine.

11 9. Despite GM's repeated assurances to members of the class of owners
12 that the subject engines were performing as designed, the engines fail at a high rate.

13 10. Even extremely low mileage class vehicles have measured valve guide
14 clearances far beyond service limits resulting in repairs at significant costs. Using
15 the test specified by GM, a high proportion of owners or lessees of class vehicles had
16 out of specification valve guides on class vehicles built from 2006 to 2014.

17 11. When confronted by multiple complaints concerning the above-
18 described defects, GM deflected complaints by insisting that "valve train noise" was
19 an inherent feature of the subject engine, and that the subject engines are not
20 defective.

21 12. Further, GM attempted to minimize the extent of any problems by
22 falsely asserting that the problems arose from a single supplier and were limited to a
23 short period of time from July 2008 to March 2009. Even then, GM maintained that
24 the condition was not truly an out of specification condition and that the condition
25 had been remedied.

26 13. As a result of customer complaints concerning the subject engines in the
27 class vehicles, GM implemented an investigation technique known as the "wiggle
28 method," as a method to determine whether the valve guides were out of

l || specification.

2 14. When GM determined that its adopted test would lead to more repairs
3 and investigations than it wished to perform, the test was summarily **and**
4 **unreasonably rejected.**

5 15. In dealing with multiple complaints concerning the subject engine in the
6 class vehicles, GM acted, at all times, to deflect criticisms, defer investigations and
7 repairs, and minimize the extent of the problems.

8 16. During the time that GM has temporized, minimizing the extent of the
9 defect in the subject engines, class members have continued to suffer excessive valve
10 train noise, out of specification valve guides and catastrophic engine failures.

11 17. As a result of GM's misconduct alleged herein, plaintiffs and the other
12 owners and lessees of class vehicles have been harmed and have suffered actual
13 damages, in that the class vehicles continue to experience mechanical failure due to
14 the engine defect, and GM has not come up with a permanent remedy for this defect;
15 nor has GM instituted a recall of these vehicles. Furthermore, owners and lessees of
16 class vehicles have incurred, and will continue to incur, out-of-pocket unreimbursed
17 costs and expenses relating to the engine defect.

PARTIES

19 | Plaintiffs

20 18. Plaintiff William D. Pilgrim (hereinafter “Pilgrim”) resides in the State
21 of Arizona. Plaintiff Pilgrim owns a 2008 Corvette Z06 vehicle with a 7.0L 427
22 engine. The vehicle was purchased on January 29, 2014. The vehicle has exhibited
23 excessive valve train noise. The vehicle failed GM’s wiggle test. Pilgrim has
24 incurred repair costs and other harm due to the engine defect in this vehicle.

19. Plaintiff Walter Goetzman (hereinafter “Goetzman”) is a resident of
Alabama. Plaintiff Goetzman has owned a 2007 Corvette Z06 vehicle.

27 20. Plaintiff Chad Reese (hereinafter “Reese”) is a resident of Alabama.
28 Plaintiff Reese owns a Corvette 2006 Z06 automobile. The vehicle has an LS7

1 engine. The vehicle was purchased in October of 2014. The vehicle suffered a
2 catastrophic engine failure when the engine dropped the valve. This vehicle is
3 defective and subject to excessive valve guide wear.

4 21. Plaintiff Jerome E. Pederson (hereinafter "Pederson") is a resident of
5 Arizona. Plaintiff Pederson owns a 2009 Corvette Z06 vehicle with a 7.0 LV8
6 engine. This vehicle was purchased in July of 2013. This vehicle is defective and
7 subject to excessive valve guide wear.

8 22. Ahmed J. Cannon (hereinafter "Cannon") is a resident of Arizona.
9 Plaintiff Cannon owns a 2006 Corvette Z06 with a 427 c.i. LS7 engine. The vehicle
10 was purchased on December 8, 2008, and was covered by a GM factory warranty.
11 No repairs have been made by GM. The vehicle has exhibited signs of excessive
12 valve guide wear including ticking sound noises which are increasing.

13 23. Plaintiff Cannon is also the owner of a 2012 Camaro SS with a 7.0 liter
14 427 cubic inch LS7 engine. The engine suffered a failure. The engine has suffered a
15 catastrophic failure due to the defects.

16 24. Plaintiff Michael Fernandez (hereinafter "Fernandez") is a resident of
17 California. Plaintiff Fernandez owns a 2008 Corvette Z06 vehicle with a 7.0L V8
18 engine purchased May 24, 2013. All valve clearances on the vehicle were inspected
19 and found to be outside the manufacturer's allowable tolerance range. Inspection
20 expenses were incurred.

21 25. Plaintiff Roy Haleen (hereinafter "Haleen") is a resident of California.
22 Plaintiff Haleen owns a 2008 Corvette Z06 vehicle with a 7.0L 427 engine. Valves
23 on the vehicle were inspected and found to be out of specification. Expense for
24 inspection and repair was incurred.

25 26. Plaintiff Howard Kopel (hereinafter "Kopel") is a resident of California.
26 Plaintiff Kopel has owned two class vehicles, a 2008 Corvette C6 and a 2006
27 Corvette Z06. Both vehicles suffered from excessive valve guide wear and
28 underwent inspection and repair. Mr. Kopel has incurred expense due to the

1 described defect.

2 27. Plaintiff Robert C. Murphy (hereinafter “Murphy”) is a resident of
3 California. Plaintiff Murphy owns a 2006 Corvette Z06 vehicle, with a 7.0L LS7
4 engine. The vehicle has exhibited excessive valve train noise and has failed the
5 wiggle test.

6 28. Plaintiff Mike Peters (hereinafter “Peters”) is a resident of California.
7 Plaintiff Peters has owned a 2009 Corvette Z06 vehicle with a 7.0L 427 c.i. engine.
8 This vehicle was purchased in April of 2012. This vehicle is defective and subject to
9 excessive valve guide wear.

10 29. Plaintiff Marc Adams (hereinafter “Adams”) is a resident of California.

11 Plaintiff Adams owns a 2006 Corvette Z06 vehicle with a 7.0 liter engine. The
12 vehicle was purchased in December of 2012. The vehicle is exhibiting signs of
13 excessive wear several times what would be considered normal, including excessive
14 “valve train noise.” GM has represented to Adams that these defects were normal.
15 The vehicle is defective and has experienced excessive valve guide wear.

16 30. Plaintiff Kaleb Isley (hereinafter “Isley”) is a resident of California.

17 Plaintiff Isley is the owner of a 2008 Corvette Z06 with a 427 cubic inch (7.0 liter)
18 engine. The vehicle was purchased on December 1, 2014. The vehicle exhibited
19 noise believed to be excessive valve guide wear and thereafter, suffered a
20 catastrophic failure.

21 31. Plaintiff Kai Qian (hereinafter “Qian”) is a resident of California.

22 Plaintiff Qian is the owner of a 2006 Z06 Corvette with a 7 liter V-8 engine. The
23 vehicle was purchased on September 1, 2015. The vehicle exhibits signs of a worn
24 valve guide. This vehicle is defective and subject to excessive valve guide wear.

25 32. Plaintiff Mark Rowe (hereinafter “Rowe”) is a resident of California.

26 Plaintiff Rowe owns a 2007 Z06 Corvette. The vehicle has a 7.0 liter 427 engine.
27 The vehicle was purchased on August 3, 2015. The engine has experienced
28 excessive noise reflective of excessive valve guide wear. This vehicle is defective

1 and subject to excessive valve guide wear.

2 33. The previous owner of the vehicle replaced the original motor after a
3 catastrophic failure caused by excessive valve guide wear.

4 34. Plaintiff Dallas Wicker (hereinafter "Wicker") is a resident of
5 California. Plaintiff Wicker is the owner of a 2007 Corvette Z06 vehicle. The
6 vehicle has a 7.0 liter 427 cubic inch engine. The vehicle was purchased on June 27,
7 2014. The engine in the vehicle has been inspected and the valve guides are out of
8 specification which could result in a catastrophic engine failure if they were not
9 repaired. This vehicle is defective and subject to excessive valve guide wear.

10 35. Plaintiff Miguel Quezada (hereinafter "Quezada") is a resident of
11 California. Plaintiff Quezada is the owner of a Chevy Corvette Z06 vehicle, model
12 year 2006. The vehicle has a LS7 7.0 liter 427 cubic inch engine. The vehicle was
13 purchased in August 2013. The engine suffered a malfunction caused by excessive
14 valve guide wear in January 2015. This vehicle is defective and subject to excessive
15 valve guide wear.

16 36. Plaintiff Christopher Constantine (hereinafter "Constantine") is a
17 resident of Florida. Plaintiff Constantine owns a 2006 Corvette Z06 vehicle with a
18 7.0L LS7 engine. This vehicle was purchased in December 2010. The valve guides
19 were subject to excessive wear and were repaired in 2013, causing expense to be
20 incurred.

21 37. Plaintiff Bradley Grant (hereinafter "Grant") is a resident of Florida.
22 Plaintiff Grant owns a 2008 Corvette Z06 vehicle with a 7.0 liter engine. A GM
23 protection plan expired on September 30, 2015, without necessary repairs having
24 been made by GM. The vehicle has valve guides which are subject to excessive
25 wear.

26 38. Plaintiff John Parsons (hereinafter "Parsons") is a resident of Florida.
27 Plaintiff Parsons has owned a class vehicle. This vehicle suffers from the described
28 defect and expense has been incurred for inspection and repair.

1 39. Plaintiff Robert L. Briggs (hereinafter “Briggs”) is a resident of Florida.
2 Plaintiff Briggs owns a 2007 Corvette Z06. The vehicle has a 7.0 liter engine. The
3 vehicle was purchased in July of 2006. The vehicle was inspected and the inspection
4 verified that the valves were out of specification and repairs were necessary. This
5 vehicle is defective and subject to excessive valve guide wear.

6 40. Plaintiff Robert Edgar (hereinafter “Edgar”) is a resident of Georgia.
7 Plaintiff Edgar owns a 2007 Corvette Z06. The vehicle has a 7.0 liter V8 engine.
8 The vehicle was purchased on December 4, 2014. The vehicle is exhibiting signs of
9 excessive valve guide wear.

10 41. Plaintiff Roger L. Browning (hereinafter “Browning”) is a resident of
11 Georgia. Plaintiff Browning owns a 2008 Corvette Z06 vehicle with a 7.0 liter V8
12 engine purchased on October 26, 2008. The vehicle has been inspected and the
13 inspection verified that the valve guides were excessively worn, such that repairs
14 were necessary. This vehicle is defective and subject to excessive valve guide wear.

15 42. Plaintiff Lyle Dunahoo (hereinafter “Dunahoo”) is a resident of Illinois.
16 Plaintiff Dunahoo owns a 2009 Corvette Z06 vehicle with a 7.0 engine. This vehicle
17 was purchased in January of 2012. The vehicle has out of specification findings as to
18 valve guide clearances on eight intake valves and eight exhaust valves.

19 43. Plaintiff Aaron Clark (“Clark”) is a resident of Indiana. Plaintiff Clark
20 has owned a 2008 Corvette Z06 vehicle, with a 7.0 liter LS7 engine. This vehicle is
21 defective and subject to excessive valve guide wear.

22 44. Plaintiff Alan Pelletier (hereinafter “Pelletier”) is a resident of
23 Massachusetts. Plaintiff Pelletier is the owner of a 60th Anniversary 427 Convertible
24 Corvette automobile, manufactured in 2013. The vehicle has a 7.0 liter 427 cubic
25 inch engine. The vehicle has experienced excessive valve train noise caused by
26 excessive valve guide wear. This vehicle is defective and subject to excessive valve
27 guide wear.

28 45. Plaintiff Edwin William Krause (hereinafter “Krause”) is a resident of

1 Michigan. Plaintiff Krause has owned a 2009 Corvette Z06 vehicle purchased in
2 April 2014. This vehicle is defective and subject to excessive valve guide wear.

3 46. Plaintiff Frank Juzswik (hereinafter "Juzswik") is a resident of
4 Michigan. Plaintiff Juzswik owns a 2009 Corvette Z06. The vehicle has a 7.0 liter
5 engine. The vehicle was purchased at a Chevrolet dealer in Owensboro, Kentucky.
6 The car was purchased in 2009, and traded back to the dealer at a loss in May, 2015.
7 The engine was inspected and the valves were out of specifications. This vehicle is
8 defective and subject to excessive valve guide wear.

9 47. Plaintiff S. Garrett Beck (hereinafter "Beck") is a resident of Michigan.
10 Plaintiff Beck owns a 2013 427 Corvette convertible, with a 427 cubic inch V8
11 engine. The vehicle was purchased on January 2013. The valve guides were
12 inspected and found to have excessive wear. This vehicle is defective and subject to
13 excessive valve guide wear.

14 48. Plaintiff David Sheldon (hereinafter "Sheldon") is a resident of
15 Montana. Plaintiff Sheldon owns a 2009 Corvette Z06 with a 7.0L engine. The
16 vehicle was purchased on October 15, 2012. Valve guides were inspected and were
17 out of specification, resulting in costly repairs. This vehicle is defective and subject
18 to excessive valve guide wear.

19 49. Plaintiff Jan Engwis ("hereinafter "Engwis") is a resident of Montana.
20 Plaintiff Engwis owns a 2007 Corvette Z06. The vehicle has an LS 700 liter 505
21 horsepower engine. The car was purchased on August 5, 2006. The car was covered
22 by a five year, 100,000 mile GM original engine power train warranty. The vehicle
23 suffered a catastrophic engine failure due to valve failure. This vehicle is defective
24 and subject to excessive valve guide wear.

25 50. Plaintiff Adam Balducci (hereinafter "Balducci") is a resident of New
26 Jersey. Plaintiff Balducci is the owner of a 2007 Corvette Z06 vehicle. The vehicle
27 has a 427 cubic inch V8 engine. The vehicle was purchased in November of 2006,
28 and covered by a five year, 50,000 mile warranty. The vehicle suffered a

1 catastrophic engine failure which was repaired in late 2009. This vehicle is defective
2 and subject to excessive valve guide wear.

3 51. Plaintiff Alan Ferrer (herein “Ferrer”) is a resident of New Jersey.
4 Plaintiff Ferrer is the owner of a 2006 Corvette Z06. The vehicle has a 7.0 liter
5 engine. The vehicle was purchased on August 2, 2015. This vehicle is defective and
6 subject to excess valve guide wear.

7 52. Plaintiff Jared Kiley (hereinafter “Kiley”) is a resident of Mason, Ohio.
8 Plaintiff Kiley owns a 2006 Corvette Z06 vehicle with a 7.0L engine. This vehicle
9 was purchased on August 11, 2014. The vehicle’s guides were measured and found
10 to be significantly out of specification. Expense was incurred for inspection and
11 repair of the engine. This vehicle is defective and subject to excessive valve guide
12 wear.

13 53. Plaintiff Jeff Kolodzi (hereinafter “Kolodzi”) is a resident of
14 Pennsylvania. Plaintiff Kolodzi owns a 2008 Corvette Z06 vehicle with a 427 c.i.
15 engine. The vehicle was purchased in January 2013. Valves were inspected and
16 found to be out of specification resulting in expenses incurred.

17 54. Plaintiff Derek Van Den Top (hereinafter “Van Den Top”) is a resident
18 of South Dakota. Plaintiff Van Den Top is the owner of a 2006 Corvette Z06. The
19 vehicle has a 7.0 liter LS7 engine. The vehicle was purchased on March 27, 2008.
20 The vehicle was covered at the time of purchase by a GM warranty. The vehicle
21 suffered a total engine failure in 2012, requiring a new engine. This vehicle is
22 defective and subject to excessive valve guide wear.

23 55. Plaintiff Morris Smith (hereinafter “Smith”) is a resident of Tennessee.
24 Plaintiff Smith has owned a 2009 Corvette Z06 vehicle purchased in 2010. This
25 vehicle is defective and subject to excessive valve guide wear.

26 56. Plaintiff Andres Frey (hereinafter “Frey”) is a resident of Texas.
27 Plaintiff Frey owns a 2008 Corvette Z06 vehicle with a 7.0L 427 c.i. engine. Valve
28 guides were found on inspection to be significantly out of specification, resulting in

1 expensive repairs.

2 57. Plaintiff Shawn Bain (hereinafter “Bain”) is a resident of Texas.

3 Plaintiff Bain owns a 2007 Corvette Z06. The vehicle has a 7.0LS7 427 engine. The
4 vehicle was purchased on May 30, 2015. The engine in the vehicle suffered a
5 catastrophic failure caused when the engine dropped a valve and blew up. This
6 vehicle is defective and subject to excessive valve guide wear.

7 58. Plaintiff Jeffrey M. Millslagle (hereinafter “Millslagle” is a resident of
8 Texas. Plaintiff Millslagle is the owner of a 2008 Z06 Corvette vehicle. The vehicle
9 has a 7.0 liter 427 cubic inch engine. The vehicle was purchased in July 2014. The
10 suffered a catastrophic engine failure when a valve exploded through the head and
11 engine block resulting in total engine failure. This vehicle is defective and subject to
12 excessive valve guide wear.

13 59. Plaintiff Robert Geiss (hereinafter “Geiss”) is a resident of Texas.

14 Plaintiff Geiss is the owner of a 2008 Chevrolet Corvette Z06. The vehicle has a 427
15 cubic inch 7 liter engine. The vehicle was purchased on August 15, 2011. The
16 vehicle suffered a catastrophic engine failure on April 10, 2014, which destroyed the
17 engine. This vehicle is defective and subject to excessive valve guide wear.

18 60. Defendant General Motors LLC (“new GM, GM, or defendant”) is a
19 Delaware limited liability company with its principal place of business located at 300
20 Renaissance Center, Detroit, Michigan, and is a citizen of the States of Delaware and
21 Michigan. The sole member and owner of General Motors LLC is General Motors
22 Holding LLC. General Motors Holding LLC is a Delaware limited liability company
23 with its principal place of business in the State of Michigan. The sole member and
24 owner of General Motors Holding LLC is General Motors Company, which is a
25 Delaware corporation with its principal place in the State of Michigan, and is a
26 citizen of the States of Delaware and Michigan.

27 61. New GM was incorporated in 2009 and, effective on July 11, 2009,
28 acquired substantially all assets and assumed certain liabilities of General Motors

1 Corporation (“Old GM”) through a section 363 sale under Chapter 11 of the U.S.
2 Bankruptcy Code.

3 62. It is undisputed that new GM had express obligations, as well as
4 obligations by law, to comply with the certification, reporting and recall
5 requirements of the National Traffic and Motor Vehicle Act and the Transportation
6 Recall Enhancement Accountability and Documentation Act.

JURISDICTION

8 63. This is a class action.

9 64. Plaintiffs, other than Krause and Juzswik, are citizens of states different
10 from the home state of defendant. Members of the plaintiff class are citizens of
11 states different than defendant.

65. The number of class members from the State of California in the aggregate is substantially larger than the number of class members who are citizens of any other state.

15 66. On information and belief, aggregate claims of individual class
16 members exceed \$5,000,000, inclusive of interest and costs.

17 | 67. Jurisdiction is proper in this Court pursuant to 28 U.S.C. section
18 | 1332(d).

VENUE

68. GM, as new GM, has engaged in unfair business practices directed at/or
causing harm to persons residing, located or doing business in this district and in the
United States.

23 69. Defendant through its business of distributing, selling and leasing its
24 vehicles has established sufficient contacts in this district such that it is subject to
25 personal jurisdiction here. Defendant is deemed to reside in this district pursuant to
26 28 U.S.C. section 1391(a).

27 70. In addition, a substantial part of the events or omissions giving rise to
28 these claims and a substantial part of the property that is a subject of this action are in

1 this district.

2 71. Venue is proper in this Court pursuant to 20 U.S.C. 1391(a).

3 **CLASS ALLEGATIONS**

4 **A. The Nationwide Class**

5 72. Under Rules 23(a), 23(b)(2) and/or 23(b)(3) of the Federal Rules of
6 Civil Procedure, plaintiffs bring this action on behalf of themselves and a class
7 initially defined as follows. For the assertion of claims under the Racketeer
8 Influence and Corrupt Organizations Act (“RICO” and/or “the Nationwide Class”)

9 All persons in the United States who purchased or leased a class
10 vehicle at any time from 2006 to the present and who (1) still own or
11 lease a class vehicle or (2) sold a class vehicle at any time from July
12 2009 to the present. Class vehicles include all Chevrolet Corvette 427
13 or Corvette Z06 vehicles equipped with 7.0 liter engines. Excluded
14 from the nationwide class are new GM, its employees, co-conspirators
15 or officers, directors, legal representatives, heirs, successors, and wholly
16 or partly owned subsidiaries or affiliates of new GM, new GM dealers,
17 class counsel and their employees; and the judicial officers and their
18 immediate family members and associated court staff assigned to this
19 case, and all persons within the third degree of relationship of any such
20 persons.

21 **B. State Law Classes**

22 73. Plaintiffs allege claims, under the laws of each state and the District of
23 Columbia, for the following state-wide classes:

24 All persons who purchased or leased a class vehicle at any time
25 from 2006 to the present, and who (1) still own or lease a class vehicle
26 or (2) sold a class vehicle at any time from July 2009 to the present.
27 Class vehicles include all Chevrolet Corvette 427 or Corvette Z06
28 vehicles equipped with 7.0 liter engines.. Excluded from each of the

1 class and subclasses are new GM, its employees co-conspirators or
2 officers, directors, legal representatives, heirs, successors, and wholly or
3 partly owned subsidiaries or affiliates of new GM, new GM dealers,
4 class counsel and their employees; and the judicial officers and their
5 immediate family members and associated court staff assigned to this
6 case, and all persons within the third degree of relationship of any such
7 persons.

8 A subclass in each described state for persons who (1) still own or lease
9 a class vehicle or (2) sold a class vehicle at any time from July 2009 to the
10 present.

11 **C. The Classes and Subclasses Meet Rule 23 Requirements**

12 74. Plaintiffs are informed and believe that there are approximately 28,000
13 class vehicles nationwide and such vehicles exist in each state. Individual joinder of
14 all class members is impracticable.

15 75. The class can be readily identified using registration records, sales
16 records, production records, and other information kept by GM or third parties in the
17 usual course of business within their control.

18 76. Questions of law and fact are common to each of the classes and
19 subclasses and predominate over questions affecting only individual members,
20 including the following:

21 (a) Whether Chevrolet Corvette 427 and Corvette Z06 class vehicles
22 equipped with 7.0 liter V8 engines suffer from engine valve guide defects.

23 (b) Whether GM was aware of the defects, and concealed the defects
24 from regulators, plaintiffs, and the class;

25 (c) Whether GM misrepresented to class vehicle purchasers that the
26 class vehicles are safe, reliable and of high quality;

27 (d) Whether GM misrepresented itself as a reputable manufacturer
28 that valves quality in its vehicles and stands behind its vehicles after they are sold;

(e) Whether GM actively encouraged the concealment of known defects from regulators and consumers;

(f) Whether GM engaged in fraudulent concealment;

(g) Whether GM engaged in unfair, deceptive, unlawful and/or fraudulent acts or practices in trade or commerce by failing to disclose that the class vehicles had serious defects.

(h) Whether GM violated various state consumer protection statutes.

(k) Whether GM has been unjustly enriched;

20 (n) Whether plaintiffs and the members of the class are entitled to
21 equitable and/or injunctive relief;

26 (p) Whether any and all applicable limitation periods are tolled by
27 acts of fraudulent concealment.

(q) Whether GM has a duty to inspect and repair class vehicles due to

1 significant and continuing safety concerns; and

2 (r) Whether GM has a duty to recall class vehicles based on
3 significant and continuing safety concerns.

4 77. Plaintiffs' claims are typical of the claims of the class members and
5 arise from the same course of conduct by GM. The relief plaintiffs seek is typical of
6 the relief sought for the absent class members.

7 78. Plaintiffs' claims are typical of the claims of the class members and
8 arise from the same course of conduct by GM. The relief plaintiffs seek is typical of
9 the relief sought for the absent class members.

10 79. Plaintiffs will fairly and adequately represent and protect the interests of
11 all absent class members. Plaintiffs are represented by counsel competent and
12 experienced in product liability, consumer protection, and class action litigation.

13 80. A class is superior to other available methods for the fair and efficient
14 adjudication of this controversy since joinder of all the individual class members is
15 impracticable because the damages suffered by each individual class member may be
16 relatively small. The expense and burden of individual litigation would make it very
17 difficult or impossible for individual class members to redress the wrongs done to
18 each of them individually, and the burden imposed on the judicial system would be
19 enormous. Rule 23 provides the Court with authority and flexibility to maximize the
20 benefits of the class mechanism and reduce management challenges. The Court may,
21 on motion of plaintiffs or on its own determination, utilize the processes of Rule
22 23(c)(4) and or (c)(5) to certify common questions of fact or law and to designate
23 subclasses.

24 81. The prosecution of separate actions by the individual class members
25 would create a risk of inconsistent or varying adjudications for individual class
26 members, which would establish incompatible standards of conduct for GM. The
27 conduct of this action as a class action presents far fewer management difficulties,
28 conserves judicial resources and the parties' resources, and protects the right of each

1 || class member.

2 82. Plaintiffs are not aware of any obstacles likely to be encountered in the
3 management of this action that would preclude its maintenance as a class action.
4 Plaintiffs anticipate providing appropriate notice to be approved by the Court after
5 discovery into the size and nature of the class. Absent a class action, most class
6 members would likely find the cost of litigating their claims prohibitively high, and
7 would therefore have no effective remedy at law. Because of the relatively small
8 size of the individual class members claims, it is likely that only a few class members
9 could afford to seek legal redress for GM's misconduct. Absent a class action, class
10 members will continue to incur damages and GM's misconduct will continue without
11 remedy.

12 | CLAIMS FOR RELIEF

COUNT I

**VIOLATION OF RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT (“RICO”) 18 U.S.C. Section 1961, et seq.**

16 83. Plaintiffs hereby incorporate by reference the allegations contained in
17 the proceeding paragraphs of this complaint.

18 84. This claim is brought on behalf of the nationwide class against
19 defendant GM for actual damages and treble damages and equitable relief under 18
20 U.S.C. section 1964. Members of the nationwide class are referred to herein
21 collectively as “class members.”

22 85. GM, the Enterprise member, plaintiffs and the class members are
23 "persons" within the meaning of 18 U.S.C. section 1961(3).

24 86. On May 24, 2015, the United States Department of Justice announced it
25 had found evidence of criminal wrongdoing by GM, including repeated acts of fraud
26 for its failure to disclose defects in its products. GM committed both criminal and
27 civil fraud and, as set forth in this complaint, did not act alone.

28 87. From the inception of new GM onwards, new GM conducted an

1 enterprise of associated in fact entities (“the Enterprise”), which was designed to
2 conceal information regarding the true nature and scope of defects to its automobile
3 products from the public, the federal government and its agencies, its customers, and
4 the owners and lessees of class vehicles, including the defective vehicles at issue
5 herein; and to affirmatively misrepresent the quality of the class vehicles in order to
6 (a) fraudulently induce plaintiffs and other class members to purchase or lease the
7 subject vehicles, and (b) avoid the cost of fixing the defects which existed in the
8 class vehicles and to avoid undermining GM’s brand image concerning class vehicles
9 owned by plaintiffs and class members.

10 88. New GM was associated with the illegal enterprise and conducted and
11 participated in the enterprise’s affairs through a pattern of racketeering activity
12 consisting of numerous and repeated uses of the interstate mails and wire
13 communications to execute a scheme to defraud, all in violation of 18 U.S.C. section
14 1962(c).

15 89. The RICO Enterprise which engaged in, and whose activities affected,
16 interstate and foreign commerce, is an association in fact enterprise within the
17 meaning of 18 U.S.C. 1961(4) and consists of “persons” associated together for the
18 common purpose of employing the multiple deceptive , abusive, and fraudulent acts
19 described herein.

20 90. At all times, the enterprise consisted of at least new GM, Esis, Inc.
21 (hereinafter “Esis”) **and Hib Hilberson (hereinafter “Hilberson”)**.

22 91. Esis is a company that offers “risk management products and services.”
23 It is part of the Ace Group, headed by Ace Limited, and is separate and distinct from
24 the other enterprise constituents. During the duration of the enterprise, Esis served as
25 new GM’s claims administrator, routinely investigating, analyzing and resolving
26 claims involving defects in GM vehicles, including the defects alleged herein.
27 Product liability claims forwarded Esis for investigation and review included, among
28 others, those involving engine failures and costs of inspection and repair. Esis

1 knowingly collaborated with new GM to fraudulently conceal information about the
2 defects from claimants, the government and its agencies, and the public, which
3 scheme was furthered by Esis's mailings and wire communications with the
4 Enterprise and claimants.

5 92. Esis was at all times well aware of the excessive valve guide wear in the
6 class vehicles.

7 93. Hilberson is a GM employee who has actively and fraudulently
8 defended the subject vehicles in social media, including consumer forums, in
9 furtherance of the GM scheme.

10 94. The RICO enterprise is an ongoing organization with an ascertainable
11 structure, and a framework for making and carrying out decisions, that functions as a
12 continuing unit with established duties, and that is separate and distinct from the
13 pattern of racketeering activity in which enterprise members have engaged and are
14 engaging. The enterprise was and is used by new GM as a tool to effectuate the
15 pattern of racketeering activity.

16 95. New GM, Esis and Hilberson are entities separate and distinct from each
17 other, and from the enterprise. All of the enterprise constituents are independent
18 legal entities with the authority and responsibility to act independently of the
19 enterprise and of the other enterprise members.

20 96. The members of the enterprise all had a common purpose: To
21 misrepresent the quality of class vehicles and/or to conceal information regarding the
22 nature and scope of the defects, including the engine defect as alleged herein, from
23 the government, its agencies, the public, and the class. For new GM, the purpose of
24 the scheme to defraud was to conceal the true scope and nature of the defects in order
25 to sell at least more vehicles, as well as to avoid incurring the cost and responsibility
26 of repairing or replacing class vehicles, initiating a recall. By concealing the scope
27 and nature of the defects, new GM maintained and boosted consumer confidence in
28 the GM brand, sold more GM vehicles, and avoided remediation costs and negative

1 publicity associated with the defects and recalls.

2 97. New GM conducted and participated in the affairs of the enterprise
3 through a pattern of racketeering activity that lasted many years, commencing from
4 or shortly after new GM's inception as an entity in 2009, continuing through at least
5 2014. This pattern consisted of numerous and repeated violations of the federal mail
6 and wire fraud statutes – namely 18 U.S.C. sections 1341 and 1343 – that prohibit
7 the use of any interstate or foreign mail or wire facility for the purpose of executing a
8 scheme to defraud. These mailings and wirings were executed in furtherance of the
9 enterprise's scheme to defraud the class and caused injury to the property of class
10 members.

11 98. To further the scheme to defraud, new GM routinely issued technical
12 service bulletins to the dealers and/or letters to consumers and/or responses in
13 internet forums as a stop gap half measure designed to avoid costly recalls.

14 99. As part of its obligations under the TREAD Act, new GM was required
15 to submit to NHTSA, its monthly and quarterly reports regarding potential product
16 defects and complaints involving potential defects. To further the scheme to defraud,
17 and in order to escape investigation and costs associated with recalls, new GM
18 systematically under reported and omitted relevant information about the nature of
19 the defects and the number of defect-related incidents and complaints from these
20 reports, which new GM transmitted or caused to be transmitted from its offices in
21 Michigan to federal regulators in Washington, D.C.

22 100. The conduct of new GM, Esis and Hilberson in furtherance of this
23 scheme was intentional. Plaintiffs and class members were harmed by new GM's
24 conduct and, as a result, purchased or leased defective class vehicles after new GM
25 was created for significantly more money than they would have paid absent the
26 scheme to defraud, and/or remain in possession of vehicles of diminished value that
27 new GM otherwise would have repaired or replaced, and/or sold class vehicles after
28 revelations of defects for a loss. In addition, plaintiffs and class members were

1 harmed by undertaking the costs of investigations and repairs caused by the defects.
2 New GM unfairly reaped millions of dollars in excessive sales revenue as a result of
3 this scheme and its conduct in furtherance of this scheme.

4 **COUNT II**

5 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**
6 **(15 U.S.C. Section 2301, et seq.)**

7 101. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 102. Plaintiffs bring this Count on behalf of members of the nationwide class
10 who are residents of the following states: Alaska, Arkansas, California, Colorado,
11 Delaware, District of Columbia, Hawaii, Indiana, Kansas, Louisiana, Maine,
12 Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana,
13 Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North
14 Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina,
15 South Dakota, Texas, Utah, Virginia, West Virginia, and Wyoming (the class for the
16 purposes of this Count).

17 103. This Court has jurisdiction to decide claims brought under 15 U.S.C.
18 2301 by virtue of 28 U.S.C. section 1332(a) – (d).

19 104. The class vehicles are “consumer products” within the meaning of the
20 Magnuson-Moss Warranty Act, 15 U.S.C. section 2301(1).

21 105. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss
22 Warranty Act, 15 U.S.C. section 2301(3). They are consumers because they are
23 persons entitled under applicable state law to enforce against the warrantor the
24 obligations of its implied warranties.

25 106. GM is a “supplier” and “warrantor” within the meaning of the
26 Magnuson-Moss Warranty Act, 15 U.S.C. section 2301(4) – (5).

27 107. 15 U.S.C. section 2310(d)(1) provides a cause of action for any
28 consumer who is damaged by the failure of a warrantor to comply with an implied

1 warranty.

2 108. GM provided plaintiffs and the other class members with an implied
3 warranty of merchantability in connection with the purchase or lease of their vehicles
4 on or after July 11, 2009, that is an “implied warranty” within the meaning of the
5 Magnuson-Moss Warranty Act, 15 U.S.C. section 2301(7). As a part of the implied
6 warranty of merchantability, GM warranted that the class vehicles were fit for their
7 ordinary purpose as safe passenger motor vehicles, would pass without objection in
8 the trade as designed, manufactured and marketed and packaged and labeled.

9 109. GM breached its implied warranties as described in more detail above
10 and is therefore, liable to plaintiffs and the class pursuant to 15 U.S.C. section
11 2310(d)(1). Without limitation, the class vehicles share common design defects in
12 that they are defectively designed and manufactured to permit excessive valve wear
13 which results in sudden failure during ordinary operation, leaving occupants of the
14 class vehicles vulnerable to crashes, serious injury, and death.

15 110. In its capacity as a warrantor, GM had knowledge of the inherent
16 defects in the class vehicles. Any effort by GM to limit the implied warranties in a
17 manner that would exclude coverage of the class vehicles is unconscionable, and any
18 such effort to disclaim, or otherwise limit, liability for the class vehicles is null and
19 void.

20 111. Any limitations GM might seek to impose on its warranties are
21 procedurally unconscionable. There was unequal bargaining power between GM and
22 the plaintiffs and the other class members as, at all times of purchase and lease,
23 plaintiffs and the other class members had no other options for purchasing warranty
24 coverage other than directly from GM.

25 112. Any limitations GM might seek to impose on its warranties are
26 substantively unconscionable. GM knew that the class vehicles were defective and
27 would continue to pose risks after the warranties purportedly expired. GM failed to
28 disclose these defects to plaintiffs and the other class members. Thus, GM’s

1 enforcement of the durational limitations on those warranties is harsh and shocks the
2 conscience.

3 113. Plaintiffs and each of the other class members have had sufficiently
4 direct dealings with either GM or its agents (dealerships) to establish a privity of
5 contract between GM on the one hand, and plaintiffs and each of the other class
6 members, on the other hand. Nonetheless, privity is not required here because
7 plaintiffs and each of the other class members are intended third party beneficiaries
8 of contracts between GM and its dealers, and specifically, of GM's implied
9 warranties. The dealers were not intended to be the ultimate consumers of the class
10 vehicles and have no rights under the warranty agreements provided with the class
11 vehicles; the warranty agreements were designed for and intended to benefit
12 consumers. Finally, privity is also not required because the class vehicles are
13 dangerous instrumentalities due to the aforementioned defects and non-conformities.

14 114. Pursuant to 15 U.S.C. section 2310(e), plaintiffs are entitled to bring this
15 class action and are not required to give GM notice and an opportunity to cure until
16 such time as the Court determines the representative capacity of plaintiffs pursuant to
17 Rule 23 of the Federal Rules of Civil Procedure.

18 115. The amount in controversy of plaintiffs' individual claims meets or
19 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum
20 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be
21 determined in this lawsuit. Plaintiffs, individually and on behalf of the other class
22 members, seek all damages permitted by law, including diminution in value of their
23 vehicles, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C.
24 2310(d)(2), plaintiffs and other class members are entitled to recover a sum equal to
25 the aggregate amount of costs and expenses (including attorneys' fees based on
26 actual time expended) determined by the Court to have reasonably been incurred by
27 plaintiffs and the other class members in connection with the commencement and
28 prosecution of this action.

1 116. Further, plaintiffs and the class are also entitled to equitable relief under
2 15 U.S.C. section 2310(d)(1). Based on GM's continuing failures to fix the known
3 defects, plaintiffs seek a declaration that GM has not adequately implemented its
4 recall commitments and requirements and general commitments to fix its failed
5 processes, and injunctive relief in the form of judicial supervision over the recall
6 process is warranted. Plaintiffs also seek and a determination that GM is obligated to
7 provide warranty services beyond the time specified in said warranties, based on the
8 facts as alleged herein. Plaintiffs also seek the establishment of a GM funded
9 program for plaintiffs and class members to recover out-of-pocket costs incurred in
10 attempting to rectify the defects in their vehicles.

COUNT III

NEGLIGENCE

13 117. Plaintiffs bring this Count on behalf of members of the nationwide class
14 who reside in Arkansas, Maryland, Louisiana, Maryland and Ohio (negligence
15 subclasses).

16 118. GM has designed, manufactured, sold or otherwise placed in the stream
17 of commerce class vehicles which are defective, as set forth above.

18 119. GM had a duty to design and manufacture a product that would be
19 useful for its intended and foreseeable uses and users, including the use to which its
20 products were put by plaintiffs and other members of the negligence subclasses.

120. GM breached its duties to plaintiffs and the other members of the
negligence subclasses because GM was negligent in the design, development and
manufacture and testing of the class vehicles, and GM is responsible for this
negligence.

25 121. GM was negligent in the design, development, manufacture and testing
26 of the class vehicles because it knew, or in the exercise of reasonable care should
27 have known, that the vehicles equipped with a 7.0 liter V8 engine were defective and
28 posed an unreasonable risk of catastrophic engine failure with a risk of death or

1 seriously bodily injury to plaintiffs and other members of the negligent subclasses,
2 passengers, other motorists, pedestrians and the public at large.

3 122. Plaintiffs, individually and on behalf of the other members of the
4 negligence subclasses, rely upon Restatement (second) of Torts section 395.

5 123. GM further breached its duties to plaintiffs and the other members of the
6 negligence subclasses by supplying directly or through a third persons defective
7 vehicles to be used by such foreseeable persons as plaintiffs and the other members
8 of negligence subclasses.

9 124. GM knew, or had reason to know, that the vehicles were likely to suffer
10 a catastrophic engine failure and were likely dangerous for the use to which they
11 were supplied.

12 125. GM failed to exercise reasonable care to inform customers of the
13 dangerous condition or of the facts under which the vehicles are likely to be
14 dangerous.

15 126. GM had a continuing duty to warn and instruct the intended foreseeable
16 users of its vehicles, including plaintiffs and the other members of the negligence
17 subclasses, of the defective condition of the vehicles and the risk attended to using
18 the vehicles. Plaintiffs and other members of the negligence subclass were entitled
19 to know that the vehicles, in their ordinary operation, were not reasonably safe for
20 their intended and ordinary purposes and uses.

21 127. GM knew or should have known of the defects described herein. GM
22 breached its duty to plaintiffs and other members of the negligence subclasses because
23 it failed to warn and instruct the intended foreseeable users of its vehicles of the
24 defective conditions of the vehicles, and the risk attended to using the vehicles.

25 128. As a direct and proximate result of GM's negligence, plaintiffs and the
26 other members of the negligence subclasses suffered damages.

27 ////

28 ////

Alabama

COUNT IV

VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT

(ALA. CODE § 8-19-1, et seq.)

5 129. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 130. This claim is brought solely on behalf of Nationwide Class Members
8 who are Alabama residents (the “Alabama Class”).

9 131. Plaintiffs and the Alabama Class are “consumers” within the meaning of
10 ALA. CODE § 8-19-3(2).

11 132. Plaintiffs, the Alabama Class, and New GM are “persons” within the
12 meaning of ALA. CODE § 8-19-3(5).

13 133. The class vehicles are “goods” within the meaning of ALA. CODE § 8-
14 19-3(3).

134. New GM was and is engaged in “trade or commerce” within the
meaning of ALA. CODE § 8-19-3(8).

17 135. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”)
18 declares several specific actions to be unlawful, including: “(5) Representing that
19 goods or services have sponsorship, approval, characteristics, ingredients, uses,
20 benefits, or qualities that they do not have,” “(7) Representing that goods or services
21 are of a particular standard, quality, or grade, or that goods are of a particular style or
22 model, if they are of another,” and “(27) Engaging in any other unconscionable,
23 false, misleading, or deceptive act or practice in the conduct of trade or commerce.”

ALA. CODE § 8-19-5. New GM engaged in deceptive business practices prohibited by the Alabama DTPA, including: representing that class vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that class vehicles are of a particular standard, quality, and grade when they are not; advertising class vehicles with the intent not to sell or lease them as advertised;

1 representing that the subject of a transaction involving class vehicles has been
2 supplied in accordance with a previous representation when it has not; and engaging
3 in other unconscionable, false, misleading, or deceptive act or practice in the conduct
4 of trade or commerce.

5 136. New GM also engaged in unlawful trade practices by employing
6 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
7 suppression or omission of any material fact with intent that others rely upon such
8 concealment, suppression or omission, in connection with the sale of class vehicles
9 old on or after July 11, 2009.

10 137. From the date of its inception on July 11, 2009, New GM knew of many
11 serious defects affecting many models and years of class vehicles, because of (i) the
12 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,
13 investigations, and notifications from regulatory authorities; and (iii) ongoing
14 performance of New GM's TREAD Act obligations. New GM became aware of
15 other serious defects and systemic safety issues years ago, but concealed all of that
16 information.

17 138. New GM was also aware that it valued cost-cutting over safety, selected
18 parts from the cheapest supplier regardless of quality, and actively discouraged
19 employees from finding and flagging known defects, and that this approach would
20 necessarily cause the existence of more defects in the vehicles it designed and
21 manufactured and the failure to disclose and remedy defects in all **class** vehicles.
22 New GM concealed this information as well.

23 139. By failing to disclose and by actively concealing the many defects in
24 **class** vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
25 presenting itself as a reputable manufacturer that valued safety and stood behind its
26 vehicles after they were sold, New GM engaged in deceptive business practices in
27 violation of the Alabama DTPA.

28 140. In the course of New GM's business, it willfully failed to disclose and

1 actively concealed the dangerous risk posed by the defects discussed above. New
2 GM compounded the deception by repeatedly asserting that class vehicles were safe,
3 reliable, and of high quality, and by claiming to be a reputable manufacturer that
4 valued safety and stood behind its vehicles once they are on the road.

5 141. New GM's unfair or deceptive acts or practices were likely to and did in
6 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
7 reliability of Class vehicles, the quality of the GM brand, the devaluing of safety at
8 New GM, and the true value of the class vehicles.

9 142. New GM intentionally and knowingly misrepresented material facts
10 regarding the class vehicles with an intent to mislead Plaintiffs and the Alabama
11 Class.

12 143. New GM knew or should have known that its conduct violated the
13 Alabama DTPA.

14 144. As alleged above, New GM made material statements about the safety
15 and reliability of the class vehicles and the GM brand that were either false or
16 misleading.

17 145. New GM owed Plaintiffs a duty to disclose the true safety and reliability
18 of the class vehicles and the devaluing of safety at New GM, because New GM:

19 (a) Possessed exclusive knowledge that it valued cost-cutting over
20 safety, selected parts from the cheapest supplier regardless of quality, and actively
21 discouraged employees from finding and flagging known safety defects, and that this
22 approach would necessarily cause the existence of more defects in the vehicles it
23 designed and manufactured;

24 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

25 (c) Made incomplete representations about the safety and reliability
26 of the class vehicles generally, and the valve guide defects in particular, while
27 purposefully withholding material facts from Plaintiffs that contradicted these
28 representations.

1 146. Because New GM fraudulently concealed the defects in the class
2 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
3 attached to those vehicles by New GM's conduct, they are now worth significantly
4 less than they otherwise would be.

5 147. New GM's systemic devaluation of safety and its concealment of the
6 defects in the class vehicles were material to Plaintiffs and the Alabama Class. A
7 vehicle made by a reputable manufacturer of vehicles is worth more than an
8 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
9 conceals defects rather than promptly remedies them.

10 148. Plaintiffs and the Alabama Class suffered ascertainable loss caused by
11 New GM's misrepresentations and its concealment of and failure to disclose material
12 information. Plaintiffs who purchased class vehicles after the date of New GM's
13 inception either would have paid less for their vehicles or would not have purchased
14 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
15 of New GM's misconduct.

16 149. Regardless of time of purchase or lease, no Plaintiffs would have
17 maintained and continued to drive their vehicles had they been aware of New GM's
18 misconduct. By contractually assuming TREAD Act responsibilities with respect to
19 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
20 those vehicles because the TREAD Act on its face only applies to vehicle
21 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
22 vehicle owners to refrain from unfair and deceptive acts or practices under the
23 Alabama DTPA. And, in any event, all class vehicle owners suffered ascertainable
24 loss in the form of diminished value of their vehicles as a result of New GM's
25 deceptive and unfair acts and practices made in the course of New GM's business.

26 150. As a direct and proximate result of New GM's violations of the
27 Alabama DTPA, Plaintiffs and the Alabama Class have suffered injury-in-fact and/or
28 actual damage.

1 151. Pursuant to ALA. CODE § 8-19-10, Plaintiffs and the Alabama Class
2 seek monetary relief against New GM measured as the greater of (a) actual damages
3 in an amount to be determined at trial and (b) statutory damages in the amount of
4 \$100 for each Plaintiff and each Alabama Class member.

5 152. Plaintiffs also seek an order enjoining New GM's unfair, unlawful,
6 and/or deceptive practices, attorneys' fees, and any other just and proper relief
7 available under the ALA. CODE § 8-19-1, et seq.

COUNT V

FRAUD BY CONCEALMENT

10 153. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.

12 154. This claim is brought on behalf of Nationwide Class Members who are
13 Alabama residents (the “Alabama Class”).

14 155. New GM concealed and suppressed material facts concerning the
15 quality of the class vehicles.

16 156. New GM concealed and suppressed material facts concerning the
17 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
18 studious avoidance of quality issues, and a shoddy design process.

19 157. New GM concealed and suppressed material facts concerning the
20 defects in the class vehicles, and that it valued cost-cutting over quality and took
21 steps to ensure that its employees did not reveal known defects to regulators or
22 consumers.

23 158. New GM did so in order to boost confidence in its vehicles and falsely
24 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
25 that New GM was a reputable manufacturer that stands behind its vehicles after they
26 are sold and that its vehicles are safe and reliable. The false representations were
27 material to consumers, both because they concerned the quality and safety of the
28 class vehicles and because the representations played a significant role in the value of

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1 the vehicles.

2 159. New GM had a duty to disclose the defects in the class vehicles because
3 they were known and/or accessible only to New GM, were in fact known to New
4 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
5 superior knowledge and access to the facts, and New GM knew the facts were not
6 known to or reasonably discoverable by Plaintiffs and the Alabama Class. New GM
7 also had a duty to disclose because it made many general affirmative representations
8 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
9 were misleading, deceptive and incomplete without the disclosure of the additional
10 facts set forth above regarding defects in the class vehicles. Having volunteered to
11 provide information to Plaintiffs, GM had the duty to disclose not just the partial
12 truth, but the entire truth. These omitted and concealed facts were material because
13 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
14 and the Alabama Class.

15 160. New GM actively concealed and/or suppressed these material facts, in
16 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
17 image and cost New GM money, and it did so at the expense of Plaintiffs and the
18 Alabama Class.

19 161. On information and belief, New GM has still not made full and adequate
20 disclosure and continues to defraud Plaintiffs and the Alabama Class and conceal
21 material information regarding defects that exist in the class vehicles.

22 162. Plaintiffs and the Alabama Class were unaware of these omitted
23 material facts and would not have acted as they did if they had known of the
24 concealed and/or suppressed facts, in that they would not have purchased cars
25 manufactured by New GM; and/or they would not have purchased cars manufactured
26 by Old GM in the time after New GM had come into existence and had fraudulently
27 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
28 not have continued to drive their vehicles or would have taken other affirmative

1 steps. Plaintiffs' and the Alabama Class's actions were justified. New GM was in
2 exclusive control of the material facts and such facts were not known to the public,
3 Plaintiffs, or the Alabama Class.

4 163. Because of the concealment and/or suppression of the facts, Plaintiffs
5 and the Alabama Class sustained damage because they own vehicles that diminished
6 in value as a result of New GM's concealment of, and failure to timely disclose, the
7 defects in the class vehicles and the quality issues engendered by New GM's
8 corporate policies. Had they been aware of the defects that existed in the class
9 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
10 New GM came into existence either would have paid less for their vehicles or would
11 not have purchased or leased them at all; and no Plaintiffs regardless of time of
12 purchase or lease would have maintained their vehicles.

13 164. The value of all Alabama Class Members' vehicles has diminished as a
14 result of New GM's fraudulent concealment of the defects which have tarnished the
15 Corvette brand and made any reasonable consumer reluctant to purchase any of the
16 class vehicles, let alone pay what otherwise would have been fair market value for
17 the vehicles.

18 165. Accordingly, New GM is liable to the Alabama Class for damages in an
19 amount to be proven at trial.

166. New GM's acts were done maliciously, oppressively, deliberately, with
intent to defraud, and in reckless disregard of Plaintiffs' and the Alabama Class's
rights and well-being to enrich New GM. New GM's conduct warrants an assessment
of punitive damages in an amount sufficient to deter such conduct in the future,
which amount is to be determined according to proof.

COUNT VI

THIRD-PARTY BENEFICIARY CLAIM

27 167. Plaintiffs reallege and incorporate by reference all paragraphs as though
28 fully set forth herein.

1 168. This claim is brought only on behalf of Class members who are
2 Alabama residents (the “Alabama Class”).

3 169. In the Sales Agreement through which New GM acquired substantially
4 all of the assets of New GM, New GM explicitly agreed as follows:

5 From and after the Closing, [New GM] shall comply with the
6 certification, reporting and recall requirements of the National Traffic
7 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
8 Recall Enhancement, Accountability and Documentation Act, the Clean
9 Air Act, the California Health and Safety Code and similar Laws, in
10 each case, to the extent applicable in respect of vehicles and vehicle
11 parts manufactured or distributed by [Old GM].

12 170. With the exception of the portion of the agreement that purports to
13 immunize New GM from its own independent misconduct with respect to cars and
14 parts made by New GM, the Sales Agreement is a valid and binding contract.

15 171. But for New GM’s covenant to comply with the TREAD Act with
16 respect to cars and parts made by Old GM, the TREAD Act would have no
17 application to New GM with respect to those cars and parts. That is because the
18 TREAD Act on its face imposes reporting and recall obligations only on the
19 “manufacturers” of a vehicle. 49 U.S.C. § 30118(c).

20 172. Because New GM agreed to comply with the TREAD Act with respect
21 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a) make quarterly submissions to NHTSA of “early warning reporting” data, including incidents involving property damage, warranty claims, consumer complaints, and field reports concerning failure, malfunction, lack of durability or other performance issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all underlying records on which the early warning reports are based and all records containing information on malfunctions that may be related to motor vehicle safety. See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows

1 or should know that a safety defect exists – including notifying NHTSA and
2 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
3 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

4 173. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
5 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
6 with the TREAD Act. Under the Sales Agreement, Plaintiffs were to receive the
7 benefit of having a manufacturer responsible for monitoring the safety of their Old
8 GM vehicles and making certain that any known defects would be promptly
9 remedied.

10 174. Although the Sale Order which consummated New GM's purchase of
11 Old GM purported to give New GM immunity for claims concerning vehicles or
12 parts made by Old GM, the bankruptcy court recently ruled that provision to be
13 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
14 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
15 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
16 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
17 breaches of the promise it made in the Sales Agreement.

18 175. New GM breached its covenant to comply with the TREAD Act with
19 respect to class vehicles, as it failed to take action to remediate the defects at any
20 time, up to the present.

21 176. Plaintiffs and the Alabama Class were damaged as a result of New
22 GM's breach. Because of New GM's failure to timely remedy the defect in the class
23 vehicles, the value of Old GM class vehicles has diminished in an amount to be
24 determined at trial.

25 **COUNT VII**

26 **UNJUST ENRICHMENT**

27 177. Plaintiffs reallege and incorporate by reference all paragraphs as though
28 fully set forth herein.

1 178. This claim is brought on behalf of members of the Alabama Class who
2 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
3 after New GM came into existence, and who purchased or leased class vehicles in the
4 time period before New GM came into existence, which cars were still on the road
5 after New GM came into existence (the “Alabama Unjust Enrichment Class”).

6 179. New GM has received and retained a benefit from the Plaintiffs and
7 inequity has resulted.

8 180. New GM has benefitted from selling and leasing defective cars,
9 including Certified Pre-Owned cars, whose value was artificially inflated by New
10 GM’s concealment of defect issues that plagued class vehicles, for more than they
11 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
12 pay other costs.

13 181. With respect to the class vehicles purchased before New GM came into
14 existence that were still on the road after New GM came into existence and as to
15 which New GM had unjustly and unlawfully determined not to recall, New GM
16 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
17 from its statements about the success of New GM.

18 182. Thus, all Alabama Unjust Enrichment Class Members conferred a
19 benefit on New GM.

20 183. It is inequitable for New GM to retain these benefits.

21 184. Plaintiffs were not aware about the true facts about class vehicles, and
22 did not benefit from GM’s conduct.

23 185. New GM knowingly accepted the benefits of its unjust conduct.

24 186. As a result of New GM’s conduct, the amount of its unjust enrichment
25 should be disgorged, in an amount according to proof.

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Arizona

COUNT VIII

VIOLATIONS OF THE CONSUMER FRAUD ACT

(Arizona Rev. Stat. § 44-1521, et seq.)

5 187. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 188. This claim is brought only on behalf of Class Members who are Arizona
8 residents (the “Arizona Class”).

9 189. Plaintiffs, the Arizona Class and New GM are “persons” within the
10 meaning of the Arizona Consumer Fraud Act (“Arizona CFA”), ARIZ. REV. STAT.
11 § 44-1521(6).

12 190. The class vehicles are "merchandise" within the meaning of ARIZ.
13 REV. STAT. § 44-1521(5).

14 191. The Arizona CFA provides that “[t]he act, use or employment by any
15 person of any deception, deceptive act or practice, fraud, . . . misrepresentation, or
16 concealment, suppression or omission of any material fact with intent that others rely
17 upon such concealment, suppression or omission, in connection with the sale . . of
18 any merchandise whether or not any person has in fact been misled, deceived or
19 damaged thereby, is declared to be an unlawful practice.” ARIZ. REV. STAT. § 44-
20 1522(A).

192. New GM also engaged in unlawful trade practices by employing
deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
suppression or omission of any material fact with intent that others rely upon such
concealment, suppression or omission, in connection with the sale of class vehicles
sold on or after July 11, 2009.

193. From the date of its inception on July 11, 2009, New GM knew of many serious defects affecting many models and years of class vehicles, because of (i) the knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,

1 investigations, and notifications from regulatory authorities; and (iii) ongoing
2 performance of New GM's TREAD Act obligations. New GM became aware of
3 other serious defects and systemic safety issues years ago, but concealed all of that
4 information.

5 194. New GM was also aware that it valued cost-cutting over safety, selected
6 parts from the cheapest supplier regardless of quality, and actively discouraged
7 employees from finding and flagging known safety defects, and that this approach
8 would necessarily cause the existence of more defects in the vehicles it designed and
9 manufactured and the failure to disclose and remedy defects in all class vehicles.
10 New GM concealed this information as well.

11 195. By failing to disclose and by actively concealing the many defects in
12 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
13 presenting itself as a reputable manufacturer that valued safety and stood behind its
14 vehicles after they were sold, New GM engaged in deceptive business practices in
15 violation of the Arizona CFA.

16 196. In the course of New GM's business, it willfully failed to disclose and
17 actively concealed the dangerous risk posed by the defects discussed above. New
18 GM compounded the deception by repeatedly asserting that class vehicles were safe,
19 reliable, and of high quality, and by claiming to be a reputable manufacturer that
20 valued safety and stood behind its vehicles once they are on the road.

21 197. New GM's unfair or deceptive acts or practices were likely to and did in
22 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
23 reliability of class vehicles, the quality of the New GM brand, the devaluing of safety
24 at New GM, and the true value of the class vehicles.

25 198. New GM intentionally and knowingly misrepresented material facts
26 regarding the class vehicles with an intent to mislead Plaintiffs and the Arizona
27 Class.

28 199. New GM knew or should have known that its conduct violated the

1 Arizona CFA.

2 200. As alleged above, New GM made material statements about the safety
3 and reliability of the class vehicles and the GM brand that were either false or
4 misleading.

5 201. New GM owed Plaintiffs a duty to disclose the true safety and reliability
6 of the class vehicles and the devaluing of safety at New GM, because New GM:

7 (a) Possessed exclusive knowledge that it valued cost-cutting over
8 safety, selected parts from the cheapest supplier regardless of quality, and actively
9 discouraged employees from finding and flagging known safety defects, and that this
10 approach would necessarily cause the existence of more defects in the vehicles it
11 designed and manufactured;

12 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

13 (c) Made incomplete representations about the safety and reliability
14 of the class vehicles generally, and the valve guide defects in particular, while
15 purposefully withholding material facts from Plaintiffs that contradicted these
16 representations.

17 202. Because New GM fraudulently concealed the defects in the class
18 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
19 attached to those vehicles by New GM's conduct, they are now worth significantly
20 less than they otherwise would be.

21 203. New GM's systemic devaluation of safety and its concealment of the
22 defects in the class vehicles were material to Plaintiffs and the Arizona Class. A
23 vehicle made by a reputable manufacturer of vehicles is worth more than an
24 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
25 conceals defects rather than promptly remedies them.

26 204. Plaintiffs and the Arizona Class suffered ascertainable loss caused by
27 New GM's misrepresentations and its concealment of and failure to disclose material
28 information. Plaintiffs who purchased class vehicles after the date of New GM's

1 inception either would have paid less for their vehicles or would not have purchased
2 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
3 of New GM's misconduct.

4 205. Regardless of time of purchase or lease, no Plaintiffs would have
5 maintained and continued to drive their vehicles had they been aware of New GM's
6 misconduct. By contractually assuming TREAD Act responsibilities with respect to
7 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
8 those vehicles because the TREAD Act on its face only applies to vehicle
9 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
10 vehicle owners to refrain from unfair and deceptive acts or practices under the
11 Arizona CFA. And, in any event, all class vehicle owners suffered ascertainable loss
12 in the form of diminished value of their vehicles as a result of New GM's deceptive
13 and unfair acts and practices made in the course of New GM's business.

14 206. The recalls and repairs instituted by New GM have not been adequate.

15 207. As a direct and proximate result of New GM's violations of the Arizona
16 CFA, Plaintiffs and the Arizona Class have suffered injury-in-fact and/or actual
17 damage.

18 208. Plaintiffs and the Arizona Class seek monetary relief against New GM
19 as the greater of (a) actual damages in an amount to be determined at trial and (b)
20 statutory in the amount of \$100 for each Plaintiff and each Arizona Class Member.
21 Plaintiffs and the Arizona Class also seek punitive damages because New GM
22 engaged in aggravated and outrageous conduct with an evil mind.

23 209. Plaintiffs also seek an order enjoining New GM's unfair, unlawful,
24 and/or deceptive practices, attorneys' fees, and any other just and proper relief
25 available under the Arizona CFA.

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28 ////

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COUNT IX

FRAUD BY CONCEALMENT

210. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

211. This claim is brought on behalf of Nationwide Class Members who are Arizona residents (the “Arizona Class”).

212. New GM concealed and suppressed material facts concerning the quality of the class vehicles.

9 213. New GM concealed and suppressed material facts concerning the
10 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
11 studious avoidance of quality issues, and a shoddy design process.

12 214. New GM concealed and suppressed material facts concerning the
13 defects in the class vehicles, and that it valued cost-cutting over quality and took
14 steps to ensure that its employees did not reveal known defects to regulators or
15 consumers.

16 215. New GM did so in order to boost confidence in its vehicles and falsely
17 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
18 that New GM was a reputable manufacturer that stands behind its vehicles after they
19 are sold and that its vehicles are safe and reliable. The false representations were
20 material to consumers, both because they concerned the quality and safety of the
21 class vehicles and because the representations played a significant role in the value of
22 the vehicles.

23 216. New GM had a duty to disclose the defects in the class vehicles because
24 they were known and/or accessible only to New GM, were in fact known to New
25 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
26 superior knowledge and access to the facts, and New GM knew the facts were not
27 known to or reasonably discoverable by Plaintiffs and the Arizona Class. New GM
28 also had a duty to disclose because it made many general affirmative representations

1 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
2 were misleading, deceptive and incomplete without the disclosure of the additional
3 facts set forth above regarding defects in the class vehicles. Having volunteered to
4 provide information to Plaintiffs, GM had the duty to disclose not just the partial
5 truth, but the entire truth. These omitted and concealed facts were material because
6 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
7 and the Arizona Class.

8 217. New GM actively concealed and/or suppressed these material facts, in
9 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
10 image and cost New GM money, and it did so at the expense of Plaintiffs and the
11 Arizona Class.

12 218. On information and belief, New GM has still not made full and adequate
13 disclosure and continues to defraud Plaintiffs and the Arizona Class and conceal
14 material information regarding defects that exist in the class vehicles.

15 219. Plaintiffs and the Arizona Class were unaware of these omitted material
16 facts and would not have acted as they did if they had known of the concealed and/or
17 suppressed facts, in that they would not have purchased cars manufactured by New
18 GM; and/or they would not have purchased cars manufactured by Old GM in the
19 time after New GM had come into existence and had fraudulently opted to conceal,
20 and to misrepresent, the true facts about the vehicles; and/or would not have
21 continued to drive their vehicles or would have taken other affirmative steps.
22 Plaintiffs' and the Arizona Class's actions were justified. New GM was in exclusive
23 control of the material facts and such facts were not known to the public, Plaintiffs,
24 or the Arizona Class.

25 220. Because of the concealment and/or suppression of the facts, Plaintiffs
26 and the Arizona Class sustained damage because they own vehicles that diminished
27 in value as a result of New GM's concealment of, and failure to timely disclose, the
28 defects in the class vehicles and the quality issues engendered by New GM's

1 corporate policies. Had they been aware of the defects that existed in the class
2 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
3 New GM came into existence either would have paid less for their vehicles or would
4 not have purchased or leased them at all; and no Plaintiffs regardless of time of
5 purchase or lease would have maintained their vehicles.

6 221. The value of all Arizona Class Members' vehicles has diminished as a
7 result of New GM's fraudulent concealment of the defects which have tarnished the
8 Corvette brand and made any reasonable consumer reluctant to purchase any of the
9 class vehicles, let alone pay what otherwise would have been fair market value for
10 the vehicles.

11 222. Accordingly, New GM is liable to the Arizona Class for damages in an
12 amount to be proven at trial.

13 223. New GM's acts were done maliciously, oppressively, deliberately, with
14 intent to defraud, and in reckless disregard of Plaintiffs' and the Arizona Class's
15 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
16 of punitive damages in an amount sufficient to deter such conduct in the future,
17 which amount is to be determined according to proof.

COUNT X

THIRD-PARTY BENEFICIARY CLAIM

20 224. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.

22 225. This claim is brought only on behalf of Class members who are Arizona
23 residents (the “Arizona Class”).

24 226. In the Sales Agreement through which New GM acquired substantially
25 all of the assets of New GM, New GM explicitly agreed as follows:

From and after the Closing, [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle and Motor Vehicle Safety Act, the Transportation

1 Recall Enhancement, Accountability and Documentation Act, the Clean
2 Air Act, the California Health and Safety Code and similar Laws, in
3 each case, to the extent applicable in respect of vehicles and vehicle
4 parts manufactured or distributed by [Old GM].

5 227. With the exception of the portion of the agreement that purports to
6 immunize New GM from its own independent misconduct with respect to cars and
7 parts made by Old GM, the Sales Agreement is a valid and binding contract.

8 228. But for New GM's covenant to comply with the TREAD Act with
9 respect to cars and parts made by Old GM, the TREAD Act would have no
10 application to New GM with respect to those cars and parts. That is because the
11 TREAD Act on its face imposes reporting and recall obligations only on the
12 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

13 229. Because New GM agreed to comply with the TREAD Act with respect
14 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
15 make quarterly submissions to NHTSA of "early warning reporting" data, including
16 incidents involving property damage, warranty claims, consumer complaints, and
17 field reports concerning failure, malfunction, lack of durability or other performance
18 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
19 underlying records on which the early warning reports are based and all records
20 containing information on malfunctions that may be related to motor vehicle safety.
21 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
22 or should know that a safety defect exists – including notifying NHTSA and
23 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
24 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

25 230. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
26 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
27 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
28 benefit of having a manufacturer responsible for monitoring the safety of their Old

1 GM vehicles and making certain that any known defects would be promptly
2 remedied.

3 231. Although the Sale Order which consummated New GM's purchase of
4 Old GM purported to give New GM immunity from claims concerning vehicles or
5 parts made by Old GM, the bankruptcy court recently ruled that provision to be
6 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
7 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
8 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
9 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
10 breaches of the promise it made in the Sale Agreement.

11 232. New GM breached its covenant to comply with the TREAD Act with
12 respect to class vehicles, as it failed to take action to remediate defects at any time,
13 up to the present.

14 233. Plaintiffs and the Arizona Class were damaged as a result of New GM's
15 breach. Because of New GM's failure to timely remedy the defect in class vehicles,
16 the value of Old GM class vehicles has diminished in an amount to be determined at
17 trial.

COUNT XI

UNJUST ENRICHMENT

20 234. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.

22 235. This claim is brought on behalf of members of the Arizona Class who
23 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
24 after New GM came into existence, and who purchased or leased class vehicles in the
25 time period before New GM came into existence, which cars were still on the road
26 after New GM came into existence (the “Arizona Unjust Enrichment Class”).

27 236. New GM has received and retained a benefit from the Plaintiffs and
28 inequity has resulted.

1 237. New GM has benefitted from selling and leasing defective cars,
2 including Certified Pre-Owned cars, whose value was artificially inflated by New
3 GM's concealment of defect issues that plagued class vehicles, for more than they
4 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
5 pay other costs.

6 238. With respect to the class vehicles purchased before New GM came into
7 existence that were still on the road after New GM came into existence and as to
8 which New GM had unjustly and unlawfully determined not to recall, New GM
9 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
10 from its statements about the success of New GM.

11 239. Thus, all Arizona Unjust Enrichment Class Members conferred a benefit
12 on New GM.

13 || 240. It is inequitable for New GM to retain these benefits.

14 241. Plaintiffs were not aware about the true facts about class vehicles, and
15 did not benefit from GM's conduct.

16 || 242. New GM knowingly accepted the benefits of its unjust conduct.

17 243. As a result of New GM's conduct, the amount of its unjust enrichment
18 should be disgorged, in an amount according to proof.

19 | California

COUNT XII

VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT

(Cal. Civ. Code § 1750, et seq.)

23 244. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 245. This claim is brought only on behalf of Nationwide Class Members who
26 are California residents (the “California Class”).

27 246. New GM is a “person” under Cal. Civ. Code § 1761(c).

28 || 247. Plaintiffs and the California Class are “consumers,” as defined by CAL.

1 CIVIL CODE § 1761(d), who purchased or leased one or more class vehicles.

2 248. The California Legal Remedies Act (“CLRA”) prohibits “unfair or
3 deceptive acts or practices undertaken by any person in a transaction intended to
4 result or which results in the sale or lease of goods or services to any consumer[.]”
5 Cal. Civ. Code § 1770(a). New GM has engaged in unfair or deceptive acts or
6 practices that violated Cal. Civ. Code § 1750, et seq., as described above and below,
7 by among other things, representing that class vehicles have characteristics, uses,
8 benefits, and qualities which they do not have; representing that class vehicles are of
9 a particular standard, quality, and grade when they are not; advertising class vehicles
10 with the intent not to sell or lease them as advertised; and representing that the
11 subject of a transaction involving class vehicles has been supplied in accordance with
12 a previous representation when it has not.

13 249. In the course of its business, New GM systematically devalued safety
14 and concealed defects in class vehicles as described herein and otherwise engaged in
15 activities with a tendency or capacity to deceive. New GM also engaged in unlawful
16 trade practices by employing deception, deceptive acts or practices, fraud,
17 misrepresentations, or concealment, suppression or omission of any material fact
18 with intent that others rely upon such concealment, suppression or omission, in
19 connection with the sale of case vehicles.

20 250. From the date of its inception on July 11, 2009, New GM knew of many
21 serious defects affecting many models and years of class vehicles, because of (i) the
22 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,
23 investigations, and notifications from regulatory authorities; and (iii) ongoing
24 performance of New GM’s TREAD Act obligations. New GM became aware of
25 other serious defects and systemic safety issues years ago, but concealed all of that
26 information.

27 251. New GM was also aware that it valued cost-cutting over safety, selected
28 parts from the cheapest supplier regardless of quality, and actively discouraged

1 employees from finding and flagging known safety defects, and that this approach
2 would necessarily cause the existence of more defects in the vehicles it designed and
3 manufactured and the failure to disclose and remedy defects in all class vehicles.
4 New GM concealed this information as well.

5 252. By failing to disclose and by actively concealing the many defects in
6 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
7 presenting itself as a reputable manufacturer that valued safety and stood behind its
8 vehicles after they were sold, New GM engaged in unfair and deceptive business
9 practices in violation of the CLRA.

10 253. In the course of New GM's business, it willfully failed to disclose and
11 actively concealed the dangerous risk posed by the defects discussed above. New
12 GM compounded the deception by repeatedly asserting that **class** vehicles were safe,
13 reliable, and of high quality, and by claiming to be a reputable manufacturer that
14 valued safety and stood behind its vehicles once they are on the road.

15 254. New GM's unfair or deceptive acts or practices were likely to and did in
16 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
17 reliability of **class** vehicles, the quality of the GM brand, the devaluing of safety at
18 New GM, and the true value of the **class** vehicles.

19 255. New GM intentionally and knowingly misrepresented material facts
20 regarding the **class** vehicles with an intent to mislead Plaintiffs and the California
21 Class.

22 256. New GM knew or should have known that its conduct violated the
23 CLRA.

24 257. As alleged above, New GM made material statements about the safety
25 and reliability of the **class** vehicles and the GM brand that were either false or
26 misleading.

27 258. New GM owed Plaintiffs a duty to disclose the true safety and reliability
28 of the **class** vehicles and the devaluing of safety at New GM, because New GM:

1 (a) Possessed exclusive knowledge that it valued cost-cutting over
2 safety, selected parts from the cheapest supplier regardless of quality, and actively
3 discouraged employees from finding and flagging known safety defects, and that this
4 approach would necessarily cause the existence of more defects in the vehicles it
5 designed and manufactured;

6 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

7 (c) Made incomplete representations about the safety and reliability
8 of the class vehicles generally, and the valve guide defects in particular, while
9 purposefully withholding material facts from Plaintiffs that contradicted these
10 representations.

11 259. Because New GM fraudulently concealed the defects in the class
12 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
13 attached to those vehicles by New GM's conduct, they are now worth significantly
14 less than they otherwise would be.

15 260. New GM's systemic devaluation of safety and its concealment of the
16 defects in the class vehicles were material to Plaintiffs and the California Class. A
17 vehicle made by a reputable manufacturer of vehicles is worth more than an
18 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
19 conceals defects rather than promptly remedies them.

20 261. Plaintiffs and the California Class suffered ascertainable loss caused by
21 New GM's misrepresentations and its concealment of and failure to disclose material
22 information. Plaintiffs who purchased class vehicles after the date of New GM's
23 inception either would have paid less for their vehicles or would not have purchased
24 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
25 of New GM's misconduct.

26 262. Regardless of time of purchase or lease, no Plaintiffs would have
27 maintained and continued to drive their vehicles had they been aware of New GM's
28 misconduct. By contractually assuming TREAD Act responsibilities with respect to

1 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
2 those vehicles because the TREAD Act on its face only applies to vehicle
3 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
4 vehicle owners to refrain from unfair and deceptive acts or practices under the
5 CLRA. And, in any event, all class vehicle owners suffered ascertainable loss of the
6 diminished value of their vehicles as a result of New GM's deceptive and unfair acts
7 and practices made in the course of New GM's business.

8 263. As a direct and proximate result of New GM's violations of the CLRA,
9 Plaintiffs and the California Class have suffered injury-in-fact and/or actual damage.

10 264. Under Cal. Civ. Code § 1780(a), Plaintiffs and the California Class seek
11 monetary relief against New GM measured as the diminution of the value of their
12 vehicles caused by New GM's violations of the CLRA as alleged herein.

13 265. Under Cal. Civ. Code § 1780(b), Plaintiffs seek an additional award
14 against New GM of up to \$5,000 for each California Class member who qualifies as
15 a "senior citizen" or "disabled person" under the CLRA. New GM knew or should
16 have known that its conduct was directed to one or more California Class Members
17 who are senior citizens or disabled persons. New GM's conduct caused one or more
18 of these senior citizens or disabled persons to suffer a substantial loss of property set
19 aside for retirement or for personal or family care and maintenance, or assets
20 essential to the health or welfare of the senior citizen or disabled person. One or
21 more California Class Members who are senior citizens or disabled persons are
22 substantially more vulnerable to New GM's conduct because of age, poor health or
23 infirmity, impaired understanding, restricted mobility, or disability, and each of them
24 suffered substantial physical, emotional, or economic damage resulting from New
25 GM's conduct.

26 266. Plaintiffs also seek punitive damages against New GM because it
27 carried out reprehensible conduct with willful and conscious disregard of the rights
28 and safety of others, subjecting Plaintiffs and the California Class to potential cruel

1 and unjust hardship as a result. New GM intentionally and willfully deceived
2 Plaintiffs on life-or-death matters, and concealed material facts that only New GM
3 knew. New GM's unlawful conduct constitutes malice, oppression, and fraud
4 warranting punitive damages under Cal. Civ. Code § 3294.

5 267. Plaintiffs further seek an order enjoining New GM's unfair or deceptive
6 acts or practices, restitution, punitive damages, costs of court, attorneys' fees under
7 Cal. Civ. Code § 1780(e), and any other just and proper relief available under the
8 CLRA.

9 **COUNT XIII**

10 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW (Cal.**

11 **Bus. & Prof. Code § 17200, et seq.)**

12 268. Plaintiffs reallege and incorporate by reference all paragraphs as though
13 fully set forth herein.

14 269. This claim is brought only on behalf of Nationwide Class Members who
15 are California residents (the "California Class").

16 270. California Business and Professions Code § 17200 prohibits any
17 "unlawful, unfair, or fraudulent business act or practices." New GM has engaged in
18 unlawful, fraudulent, and unfair business acts and practices in violation of the UCL.

19 271. New GM violated the unlawful prong of § 17200 by the following:

20 (a) violations of the CLRA, Cal. Civ. Code § 1750, et seq., as set
21 forth in California Count I by the acts and practices set forth in this Complaint.

22 (b) violation of the common-law claim of negligent failure to recall,
23 in that New GM knew or should have known the defects in class vehicles were
24 dangerous and/or were likely to be dangerous when used in a reasonably foreseeable
25 manner; New GM became aware of the attendant risks after the class vehicles were
26 sold; continued to gain information further corroborating the defects; and failed to
27 adequately recall the class vehicles, which failure was a substantial factor in causing
28 Plaintiffs and the Class harm, including diminished value and out-of-pocket costs.

10 272. New GM also violated the unfair and fraudulent prong of section 17200
11 by systematically devaluing safety and concealing defects in the class vehicles,
12 information that was material to a reasonable consumer.

13 273. New GM also violated the unfair prong of section 17200 because the
14 acts and practices set forth in the Complaint, including systematically devaluing
15 safety and concealing defects in the class vehicles, offend established public policy,
16 and also because the harm New GM caused consumers greatly outweighs any
17 benefits associated with those practices. New GM's conduct has also impaired
18 competition within the automotive vehicles market and has prevented Plaintiffs and
19 the California Class from making fully informed decisions about whether to lease,
20 purchase and/or retain the class vehicles.

21 274. From the date of its inception on July 11, 2009, New GM knew of many
22 serious defects the vehicles, because of (i) the knowledge of Old GM personnel who
23 remained at New GM; (ii) continuous reports, investigations, and notifications from
24 regulatory authorities; and (iii) ongoing performance of New GM's TREAD Act
25 obligations, as discussed above. New GM became aware of other serious defects and
26 systemic safety issues years ago, but concealed all of that information.

27 275. New GM was also aware that it valued cost-cutting over safety, selected
28 parts from the cheapest supplier regardless of quality, and actively discouraged

1 employees from finding and flagging known safety defects, and that this approach
2 would necessarily cause the existence of more defects in the vehicles it designed and
3 manufactured and the failure to disclose and remedy defects in all the class vehicles.
4 New GM concealed this information as well.

5 276. By failing to disclose and by actively concealing the many defects in
6 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
7 presenting itself as a reputable manufacturer that valued safety and stood behind its
8 vehicles after they were sold, New GM engaged in unlawful, unfair, or fraudulent
9 business acts or practices in violation of the UCL.

10 277. In the course of New GM's business, it willfully failed to disclose and
11 actively concealed the dangerous risk posed by the defects discussed above. New
12 GM compounded the deception by repeatedly asserting that the class vehicles were
13 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
14 that valued safety and stood behind its vehicles once they are on the road.

15 278. New GM's unfair or deceptive acts or practices were likely to and did in
16 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
17 reliability of the class vehicles, and the true value of the class vehicles.

18 279. New GM intentionally and knowingly misrepresented material facts
19 regarding the class vehicles with an intent to mislead Plaintiffs and the California
20 Class.

21 280. New GM knew or should have known that its conduct violated the UCL.

22 281. As alleged above, New GM made material statements about the safety
23 and reliability of the class vehicles and the GM brand that were either false or
24 misleading.

25 282. New GM owed Plaintiffs a duty to disclose the true safety and reliability
26 of the class vehicles and the devaluing of safety at New GM, because New GM:

27 (a) Possessed exclusive knowledge that it valued cost-cutting over
28 safety, selected parts from the cheapest supplier regardless of quality, and actively

1 discouraged employees from finding and flagging known safety defects, and that this
2 approach would necessarily cause the existence of more defects in the vehicles it
3 designed and manufactured;

4 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

5 (c) Made incomplete representations about the safety and reliability
6 of the class vehicles generally, and the valve guide defects in particular, while
7 purposefully withholding material facts from Plaintiffs that contradicted these
8 representations.

9 283. Because New GM fraudulently concealed the defects in the class
10 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
11 attached to those vehicles by New GM's conduct, they are now worth significantly
12 less than they otherwise would be.

13 284. New GM's systemic devaluation of safety and its concealment of the
14 defects in GM the class vehicles were material to Plaintiffs and the California Class.
15 A vehicle made by a reputable manufacturer of vehicles is worth more than an
16 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
17 conceals defects rather than promptly remedying them.

18 285. Plaintiffs and the California Class suffered ascertainable loss caused by
19 New GM's misrepresentations and its concealment of and failure to disclose material
20 information. Plaintiffs who purchased class vehicles after the date of New GM's
21 inception either would have paid less for their vehicles or would not have purchased
22 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
23 of New GM's misconduct.

24 286. Regardless of time of purchase or lease, no Plaintiffs would have
25 maintained and continued to drive their vehicles had they been aware of New GM's
26 misconduct. By contractually assuming TREAD Act responsibilities with respect to
27 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
28 those vehicles because the TREAD Act on its face only applies to vehicle

1 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
2 vehicle owners to refrain from unfair and deceptive acts or practices under the UCL.
3 And, in any event, all class vehicle owners suffered ascertainable loss in the form of
4 diminished value of their vehicles as a result of New GM's deceptive and unfair acts
5 and practices made in the course of New GM's business.

6 287. As a direct and proximate result of New GM's violations of the UCL,
7 Plaintiffs and the California Class have suffered injury-in-fact and/or actual damage.

8 288. Plaintiffs request that this Court enter such orders or judgments as may
9 be necessary, including a declaratory judgment that New GM has violated the UCL;
10 an order enjoining New GM from continuing its unfair, unlawful, and/or deceptive
11 practices; an order supervising the recalls; an order and judgment restoring to the
12 California Class Members any money lost as the result of New GM's unfair,
13 unlawful, and deceptive trade practices, including restitution and disgorgement of
14 any profits New GM received as a result of its unfair, unlawful, and/or deceptive
15 practices, as provided in Cal. Bus. & Prof. Code § 17203, Cal Civ. Proc. § 384 and
16 Cal. Civ. Code § 3345; and for such other relief as may be just and proper.

17 **COUNT XIV**

18 **FRAUD BY CONCEALMENT**

19 289. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21 290. This claim is brought on behalf of Nationwide Class Members who are
22 California residents (the "California Class").

23 291. New GM concealed and suppressed material facts concerning the
24 quality of the class vehicles.

25 292. New GM concealed and suppressed material facts concerning the
26 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
27 studious avoidance of quality issues, and a shoddy design process.

28 293. New GM concealed and suppressed material facts concerning the

1 defects in the class vehicles, and that it valued cost-cutting over quality and took
2 steps to ensure that its employees did not reveal known defects to regulators or
3 consumers.

4 294. New GM did so in order to boost confidence in its vehicles and falsely
5 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
6 that New GM was a reputable manufacturer that stands behind its vehicles after they
7 are sold and that its vehicles are safe and reliable. The false representations were
8 material to consumers, both because they concerned the quality and safety of the
9 class vehicles and because the representations played a significant role in the value of
10 the vehicles.

11 295. New GM had a duty to disclose the defects in the class vehicles because
12 they were known and/or accessible only to New GM, were in fact known to New
13 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
14 superior knowledge and access to the facts, and New GM knew the facts were not
15 known to or reasonably discoverable by Plaintiffs and the California Class. New
16 GM also had a duty to disclose because it made many general affirmative
17 representations about the safety, quality, and lack of defects in its vehicles, as set
18 forth above, which were misleading, deceptive and incomplete without the disclosure
19 of the additional facts set forth above regarding defects in the class vehicles. Having
20 volunteered to provide information to Plaintiffs, GM had the duty to disclose not just
21 the partial truth, but the entire truth. These omitted and concealed facts were material
22 because they directly impact the value of the class vehicles purchased or leased by
23 Plaintiffs and the California Class.

24 296. New GM actively concealed and/or suppressed these material facts, in
25 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
26 image and cost New GM money, and it did so at the expense of Plaintiffs and the
27 California Class.

28 297. On information and belief, New GM has still not made full and adequate

1 disclosure and continues to defraud Plaintiffs and the California Class and conceal
2 material information regarding defects that exist in the class vehicles.

3 298. Plaintiffs and the California Class were unaware of these omitted
4 material facts and would not have acted as they did if they had known of the
5 concealed and/or suppressed facts, in that they would not have purchased cars
6 manufactured by New GM; and/or they would not have purchased cars manufactured
7 by Old GM in the time after New GM had come into existence and had fraudulently
8 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
9 not have continued to drive their vehicles or would have taken other affirmative
10 steps. Plaintiffs' and the California Class's actions were justified. New GM was in
11 exclusive control of the material facts and such facts were not known to the public,
12 Plaintiffs, or the California Class.

13 299. Because of the concealment and/or suppression of the facts, Plaintiffs
14 and the California Class sustained damage because they own vehicles that
15 diminished in value as a result of New GM's concealment of, and failure to timely
16 disclose, the defects in the class vehicles and the quality issues engendered by New
17 GM's corporate policies. Had they been aware of the defects that existed in the class
18 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
19 New GM came into existence either would have paid less for their vehicles or would
20 not have purchased or leased them at all; and no Plaintiffs regardless of time of
21 purchase or lease would have maintained their vehicles.

22 300. The value of all California Class Members' vehicles has diminished as a
23 result of New GM's fraudulent concealment of the defects which have tarnished the
24 Corvette brand and made any reasonable consumer reluctant to purchase any of the
25 class vehicles, let alone pay what otherwise would have been fair market value for
26 the vehicles.

27 301. Accordingly, New GM is liable to the California Class for damages in
28 an amount to be proven at trial.

KNAPP,
PETERSEN
& CLARKE

1 302. New GM's acts were done maliciously, oppressively, deliberately, with
2 intent to defraud, and in reckless disregard of Plaintiffs' and the California Class's
3 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
4 of punitive damages in an amount sufficient to deter such conduct in the future,
5 which amount is to be determined according to proof.

COUNT XV

VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Cal. Civ. Code §§ 1791.1 & 1792)

10 303. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.

12 304. This claim is brought only on behalf of California residents who are
13 members of the Nationwide Class (“California Class”).

¹⁴ 305. Plaintiffs are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

306. The class vehicles are “consumer goods” within the meaning of Civ. Code § 1791(a).

17 307. New GM was a “manufacturer” of the class vehicles within the meaning
18 of Cal. Civ. Code § 1791(j).

19 308. New GM impliedly warranted to Plaintiffs and the California Class that
20 its class vehicles sold or leased on or after July 11, 2009 were “merchantable” within
21 the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792; however, the class vehicles do
22 not have the quality that a buyer would reasonably expect, and were therefore not
23 merchantable.

309. 1536. Cal. Civ. Code § 1791.1(a) states:

“Implied warranty of merchantability” or “implied warranty that goods are merchantable” means that the consumer goods meet each of the following:

27 (1) Pass without objection in the trade under the contract
28 description.

(2) Are fit for the ordinary purposes for which such goods are used.

(3) Are adequately contained, packaged, and labeled.

(4) Conform to the promises or affirmations of fact made on the container or label.

310. The class vehicles would not pass without objection in the automotive trade because of the defects that cause the class vehicles to suffer unusual and early engine wear and failure.

9 311. Because of these defects, the class vehicles are not reliable to drive and
10 thus not fit for ordinary purposes.

312. The class vehicles are not adequately labeled because the labeling fails
to disclose the defects. New GM failed to warn about the defects in the class
vehicles.

14 313. New GM breached the implied warranty of merchantability by selling
15 class vehicles containing defects. These defects have deprived Plaintiffs and the
16 California Class of the benefit of their bargain and have caused the class vehicles to
17 depreciate in value.

314. Notice of breach is not required because Plaintiffs and California Class members did not purchase their automobiles directly from New GM.

315. As a direct and proximate result of New GM's breach of its duties under California's law, Plaintiffs and California Class members received goods whose defective condition substantially impairs their value. Plaintiffs and the California Class members have been damaged by the diminished value of their vehicles, the product's malfunctioning, and the loss of use of their class vehicles.

316. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and California
Class members are entitled to damages and other legal and equitable relief including,
at their election, the purchase price of their class vehicles, or the overpayment or
diminution in value of their class vehicles.

317. Under Cal. Civ. Code § 1794, Plaintiffs and California Class members are entitled to costs and attorneys' fees.

COUNT XVI

NEGLIGENCE FAILURE TO RECALL

318. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

319. This claim is brought only on behalf of California residents who are members of the Nationwide Class (the “California Class”).

320. New GM manufactured, distributed, and sold class vehicles.

321. New GM knew or reasonably should have known that the class vehicles were dangerous and/or were likely to be dangerous when used in a reasonably foreseeable manner.

322. New GM either knew of the defects before the vehicles were sold, or became aware of the defects and their attendant risks after the vehicles were sold.

323. New GM continued to gain information further corroborating the defects and their risks from its inception until this year.

324. New GM failed to adequately recall the class vehicles in a timely manner.

325. Purchasers of the class vehicles, including the California Class, were harmed by New GM's failure to adequately recall all the class vehicles in a timely manner and have suffered damages, including, without limitation, damage to other components of the class vehicles caused by the defects, the diminished value of the class vehicles, the cost of modification of the defective systems, and the costs associated with the loss of use of the class vehicles.

326. New GM's failure to timely and adequately recall the class vehicles was a substantial factor in causing the purchasers' harm, including that of Plaintiffs and the California Class.

11

COUNT XVII

THIRD-PARTY BENEFICIARY CLAIM

327. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

5 328. This claim is brought only on behalf of Class members who are
6 California residents (the “California Class”).

7 329. In the Sales Agreement through which New GM acquired substantially
8 all of the assets of New GM, New GM explicitly agreed as follows:

From and after the Closing, [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by [Old GM].

16 330. With the exception of the portion of the agreement that purports to
17 immunize New GM from its own independent misconduct with respect to cars and
18 parts made by Old GM, the Sales Agreement is a valid and binding contract.

19 331. But for New GM’s covenant to comply with the TREAD Act with
20 respect to cars and parts made by Old GM, the TREAD Act would have no
21 application to New GM with respect to those cars and parts. That is because the
22 TREAD Act on its face imposes reporting and recall obligations only on the
23 “manufacturers” of a vehicle. 49 U.S.C. § 30118(c).

24 332. Because New GM agreed to comply with the TREAD Act with respect
25 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
26 make quarterly submissions to NHTSA of “early warning reporting” data, including
27 incidents involving property damage, warranty claims, consumer complaints, and
28 field reports concerning failure, malfunction, lack of durability or other performance

1 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
2 underlying records on which the early warning reports are based and all records
3 containing information on malfunctions that may be related to motor vehicle safety.
4 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
5 or should know that a safety defect exists – including notifying NHTSA and
6 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
7 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

8 333. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
9 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
10 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
11 benefit of having a manufacturer responsible for monitoring the safety of their Old
12 GM vehicles and making certain that any known defects would be promptly
13 remedied.

14 334. Although the Sale Order which consummated New GM's purchase of
15 Old GM purported to give New GM immunity from claims concerning vehicles or
16 parts made by Old GM, the bankruptcy court recently ruled that provision to be
17 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
18 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
19 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
20 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
21 breaches of the promise it made in the Sale Agreement.

22 335. New GM breached its covenant to comply with the TREAD Act with
23 respect to the class vehicles, as it failed to take action to remediate the defects at any
24 time, up to the present.

25 336. Plaintiffs and the California Class were damaged as a result of New
26 GM's breach. Because of New GM's failure to timely remedy the defect in class
27 vehicles, the value of Old GM class vehicles has diminished in an amount to be
28 determined at trial.

COUNT XVIII

UNJUST ENRICHMENT

337. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

338. This claim is brought on behalf of members of the California Class who purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period after New GM came into existence, and who purchased or leased class vehicles in the time period before New GM came into existence, which cars were still on the road after New GM came into existence (the “California Unjust Enrichment Class”).

10 339. New GM has received and retained a benefit from the Plaintiffs and
11 inequity has resulted.

340. New GM has benefitted from selling and leasing defective cars, including Certified Pre-Owned cars, whose value was artificially inflated by New GM's concealment of defect issues that plagued class vehicles, for more than they were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to pay other costs.

17 341. With respect to the class vehicles purchased before New GM came into
18 existence that were still on the road after New GM came into existence and as to
19 which New GM had unjustly and unlawfully determined not to recall, New GM
20 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
21 from its statements about the success of New GM.

342. Thus, all California Unjust Enrichment Class Members conferred a
benefit on New GM.

343. It is inequitable for New GM to retain these benefits.

344. Plaintiffs were not aware about the true facts about class vehicles, and
did not benefit from GM's conduct.

27 345. New GM knowingly accepted the benefits of its unjust conduct.

28 346. As a result of New GM's conduct, the amount of its unjust enrichment

1 should be disgorged, in an amount according to proof.

2 **Florida**

3 **COUNT XIX**

4 **VIOLATION OF FLORIDA'S UNFAIR & DECEPTIVE**
5 **TRADE PRACTICES ACT**
6 **(FLA. STAT. § 501.201, et seq.)**

7 347. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 348. This claim is brought only on behalf of Nationwide Class Members who
10 are Florida residents (the “Florida Class”).

11 349. Plaintiffs are “consumers” within the meaning of the Florida Unfair and
12 Deceptive Trade Practices Act (“FUDTPA”), FLA. STAT. § 501.203(7).

13 350. New GM engaged in “trade or commerce” within the meaning of FLA.
14 STAT. § 501.203(8).

15 351. FUDTPA prohibits “[u]nfair methods of competition, unconscionable
16 acts or practices, and unfair or deceptive acts or practices in the conduct of any trade
17 or commerce ...” FLA. STAT. § 501.204(1). New GM participated in unfair and
18 deceptive trade practices that violated the FUDTPA as described herein.

19 352. In the course of its business, New GM systematically devalued safety
20 and concealed the defects in class vehicles as described herein and otherwise
21 engaged in activities with a tendency or capacity to deceive. New GM also engaged
22 in unlawful trade practices by employing deception, deceptive acts or practices,
23 fraud, misrepresentations, or concealment, suppression or omission of any material
24 fact with intent that others rely upon such concealment, suppression or omission, in
25 connection with the sale of class vehicles.

26 353. From the date of its inception on July 11, 2009, New GM knew of many
27 serious defects affecting many models and years of the class vehicles, because of (i)
28 the knowledge of Old GM personnel who remained at New GM; (ii) continuous

1 reports, investigations, and notifications from regulatory authorities; and (iii)
2 ongoing performance of New GM's TREAD Act obligations. New GM became
3 aware of other serious defects and systemic safety issues years ago, but concealed all
4 of that information.

5 354. New GM was also aware that it valued cost-cutting over safety, selected
6 parts from the cheapest supplier regardless of quality, and actively discouraged
7 employees from finding and flagging known safety defects, and that this approach
8 would necessarily cause the existence of more defects in the vehicles it designed and
9 manufactured and the failure to disclose and remedy defects in all class vehicles.
10 New GM concealed this information as well.

11 355. By failing to disclose and by actively concealing the many defects in
12 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
13 presenting itself as a reputable manufacturer that valued safety and stood behind its
14 vehicles after they were sold, New GM engaged in unfair, unconscionable, and
15 deceptive business practices in violation of the FUDTPA.

16 356. In the course of New GM's business, it willfully failed to disclose and
17 actively concealed the dangerous risk posed by the defects discussed above. New
18 GM compounded the deception by repeatedly asserting that class vehicles were safe,
19 reliable, and of high quality, and by claiming to be a reputable manufacturer that
20 valued safety and stood behind its vehicles once they are on the road.

21 357. New GM's unfair or deceptive acts or practices were likely to and did in
22 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
23 reliability of class vehicles, the quality of the GM brand, the devaluing of safety at
24 New GM, and the true value of the class vehicles.

25 358. New GM intentionally and knowingly misrepresented material facts
26 regarding the class vehicles with an intent to mislead Plaintiffs and the Florida Class.

27 359. New GM knew or should have known that its conduct violated the
28 FUDTPA.

1 360. As alleged above, New GM made material statements about the safety
2 and reliability of the class vehicles and the GM brand that were either false or
3 misleading.

4 361. New GM owed Plaintiffs a duty to disclose the true safety and reliability
5 of the class vehicles and the devaluing of safety at New GM, because New GM:

6 (a) Possessed exclusive knowledge that it valued cost-cutting over
7 safety, selected parts from the cheapest supplier regardless of quality, and actively
8 discouraged employees from finding and flagging known safety defects, and that this
9 approach would necessarily cause the existence of more defects in the vehicles it
10 designed and manufactured;

11 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

12 (c) Made incomplete representations about the safety and reliability
13 of the class vehicles generally, and the valve guide defect in particular, while
14 purposefully withholding material facts from Plaintiffs that contradicted these
15 representations.

16 362. Because New GM fraudulently concealed the defects in the class
17 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
18 attached to those vehicles by New GM's conduct, they are now worth significantly
19 less than they otherwise would be.

20 363. New GM's systemic devaluation of safety and its concealment of the
21 defects in the class vehicles were material to Plaintiffs and the Florida Class. A
22 vehicle made by a reputable manufacturer of vehicles is worth more than an
23 otherwise comparable vehicle made by a disreputable manufacturer of unsafe
24 vehicles that conceals defects rather than promptly remedying them.

25 364. Plaintiffs and the Florida Class suffered ascertainable loss caused by
26 New GM's misrepresentations and its concealment of and failure to disclose material
27 information. Plaintiffs who purchased the class vehicles after the date of New GM's
28 inception either would have paid less for their vehicles or would not have purchased

1 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
2 of New GM's misconduct.

3 365. Regardless of time of purchase or lease, no Plaintiffs would have
4 maintained and continued to drive their vehicles had they been aware of New GM's
5 misconduct no Plaintiffs would have maintained and continued to drive their vehicles
6 had they been aware of New GM's misconduct had they been aware of New GM's
7 misconduct. By contractually assuming TREAD Act responsibilities with respect to
8 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
9 those vehicles because the TREAD Act on its face only applies to vehicle
10 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
11 vehicle owners to refrain from unfair and deceptive acts or practices under the
12 FUDTPA. And, in any event, all class vehicle owners suffered ascertainable loss in
13 the form of diminished value of their vehicles as a result of New GM's deceptive and
14 unfair acts and practices made in the course of New GM's business.

15 366. Plaintiffs and Florida Class Members risk irreparable injury as a result
16 of New GM's act and omissions in violation of the FUDTPA.

17 367. As a direct and proximate result of New GM's violations of the
18 FUDTPA, Plaintiffs and the Florida Class have suffered injury-in-fact and/or actual
19 damage.

20 368. Plaintiffs and the Florida Class are entitled to recover their actual
21 damages under FLA. STAT. § 501.211(2) and attorneys' fees under FLA. STAT. §
22 501.2105(1).

23 369. Plaintiffs also seek an order enjoining New GM's unfair, unlawful,
24 and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and
25 proper relief available under the FUDTPA.

26 ////

27 ////

28 ////

KNAPP,
PETERSEN
& CLARKE

COUNT XX

FRAUD BY CONCEALMENT

370. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

371. This claim is brought on behalf of Nationwide Class Members who are Florida residents (the “Florida Class”).

372. New GM concealed and suppressed material facts concerning the quality of the class vehicles.

9 373. New GM concealed and suppressed material facts concerning the
10 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
11 studious avoidance of quality issues, and a shoddy design process.

374. New GM concealed and suppressed material facts concerning the
defects in the class vehicles, and that it valued cost-cutting over quality and took
steps to ensure that its employees did not reveal known defects to regulators or
consumers.

16 375. New GM did so in order to boost confidence in its vehicles and falsely
17 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
18 that New GM was a reputable manufacturer that stands behind its vehicles after they
19 are sold and that its vehicles are safe and reliable. The false representations were
20 material to consumers, both because they concerned the quality and safety of the
21 class vehicles and because the representations played a significant role in the value of
22 the vehicles.

23 376. New GM had a duty to disclose the defects in the class vehicles because
24 they were known and/or accessible only to New GM, were in fact known to New
25 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
26 superior knowledge and access to the facts, and New GM knew the facts were not
27 known to or reasonably discoverable by Plaintiffs and the Florida Class. New GM
28 also had a duty to disclose because it made many general affirmative representations

1 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
2 were misleading, deceptive and incomplete without the disclosure of the additional
3 facts set forth above regarding defects in the class vehicles. Having volunteered to
4 provide information to Plaintiffs, GM had the duty to disclose not just the partial
5 truth, but the entire truth. These omitted and concealed facts were material because
6 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
7 and the Florida Class.

8 377. New GM actively concealed and/or suppressed these material facts, in
9 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
10 image and cost New GM money, and it did so at the expense of Plaintiffs and the
11 Florida Class.

12 378. On information and belief, New GM has still not made full and adequate
13 disclosure and continues to defraud Plaintiffs and the Florida Class and conceal
14 material information regarding defects that exist in the class vehicles.

15 379. Plaintiffs and the Florida Class were unaware of these omitted material
16 facts and would not have acted as they did if they had known of the concealed and/or
17 suppressed facts, in that they would not have purchased cars manufactured by New
18 GM; and/or they would not have purchased cars manufactured by Old GM in the
19 time after New GM had come into existence and had fraudulently opted to conceal,
20 and to misrepresent, the true facts about the vehicles; and/or would not have
21 continued to drive their vehicles or would have taken other affirmative steps.
22 Plaintiffs' and the Florida Class's actions were justified. New GM was in exclusive
23 control of the material facts and such facts were not known to the public, Plaintiffs,
24 or the Florida Class.

25 380. Because of the concealment and/or suppression of the facts, Plaintiffs
26 and the Florida Class sustained damage because they own vehicles that diminished in
27 value as a result of New GM's concealment of, and failure to timely disclose, the
28 defects in the class vehicles and the quality issues engendered by New GM's

1 corporate policies. Had they been aware of the defects that existed in the class
2 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
3 New GM came into existence either would have paid less for their vehicles or would
4 not have purchased or leased them at all; and no Plaintiffs regardless of time of
5 purchase or lease would have maintained their vehicles.

6 381. The value of all Florida Class Members' vehicles has diminished as a
7 result of New GM's fraudulent concealment of the defects which have tarnished the
8 Corvette brand and made any reasonable consumer reluctant to purchase any of the
9 class vehicles, let alone pay what otherwise would have been fair market value for
10 the vehicles.

11 382. Accordingly, New GM is liable to the Florida Class for damages in an
12 amount to be proven at trial.

383. New GM's acts were done maliciously, oppressively, deliberately, with
intent to defraud, and in reckless disregard of Plaintiffs' and the Florida Class's
rights and well-being to enrich New GM. New GM's conduct warrants an assessment
of punitive damages in an amount sufficient to deter such conduct in the future,
which amount is to be determined according to proof.

COUNT XXI

THIRD-PARTY BENEFICIARY CLAIM

20 384. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.

22 385. This claim is brought only on behalf of Class members who are Florida
23 residents (the “Florida Class”).

386. In the Sales Agreement through which New GM acquired substantially all of the assets of New GM, New GM explicitly agreed as follows:

From and after the Closing, [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle and Motor Vehicle Safety Act, the Transportation

1 Recall Enhancement, Accountability and Documentation Act, the Clean
2 Air Act, the California Health and Safety Code and similar Laws, in
3 each case, to the extent applicable in respect of vehicles and vehicle
4 parts manufactured or distributed by [Old GM].

5 387. With the exception of the portion of the agreement that purports to
6 immunize New GM from its own independent misconduct with respect to cars and
7 parts made by Old GM, the Sales Agreement is a valid and binding contract.

8 388. But for New GM's covenant to comply with the TREAD Act with
9 respect to cars and parts made by Old GM, the TREAD Act would have no
10 application to New GM with respect to those cars and parts. That is because the
11 TREAD Act on its face imposes reporting and recall obligations only on the
12 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

13 389. Because New GM agreed to comply with the TREAD Act with respect
14 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
15 make quarterly submissions to NHTSA of "early warning reporting" data, including
16 incidents involving property damage, warranty claims, consumer complaints, and
17 field reports concerning failure, malfunction, lack of durability or other performance
18 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
19 underlying records on which the early warning reports are based and all records
20 containing information on malfunctions that may be related to motor vehicle safety.
21 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
22 or should know that a safety defect exists – including notifying NHTSA and
23 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
24 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

25 390. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
26 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
27 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
28 benefit of having a manufacturer responsible for monitoring the safety of their Old

1 GM vehicles and making certain that any known defects would be promptly
2 remedied.

3 391. Although the Sale Order which consummated New GM's purchase of
4 Old GM purported to give New GM immunity from claims concerning vehicles or
5 parts made by Old GM, the bankruptcy court recently ruled that provision to be
6 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
7 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
8 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
9 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
10 breaches of the promise it made in the Sale Agreement.

11 392. New GM breached its covenant to comply with the TREAD Act with
12 respect to the class vehicles, as it failed to take action to remediate the defects at any
13 time, up to the present.

14 393. Plaintiffs and the Florida Class were damaged as a result of New GM's
15 breach. Because of New GM's failure to timely remedy the defect in class vehicles,
16 the value of class vehicles has diminished in an amount to be determined at trial.

COUNT XXII

UNJUST ENRICHMENT

19 394. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21 395. This claim is brought on behalf of members of the Florida Class who
22 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
23 after New GM came into existence, and who purchased or leased class vehicles in the
24 time period before New GM came into existence, which cars were still on the road
25 after New GM came into existence (the “Florida Unjust Enrichment Class”).

396. New GM has received and retained a benefit from the Plaintiffs and
inequity has resulted.

397. New GM has benefitted from selling and leasing defective cars,

1 including Certified Pre-Owned cars, whose value was artificially inflated by New
2 GM's concealment of defect issues that plagued the class vehicles, for more than
3 they were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced
4 to pay other costs.

5 398. With respect to the class vehicles purchased before New GM came into
6 existence that were still on the road after New GM came into existence and as to
7 which New GM had unjustly and unlawfully determined not to recall, New GM
8 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
9 from its statements about the success of New GM.

10 399. Thus, all Florida Unjust Enrichment Class Members conferred a benefit
11 on New GM.

12 || 400. It is inequitable for New GM to retain these benefits.

13 401. Plaintiffs were not aware about the true facts about class vehicles, and
14 did not benefit from GM's conduct.

15 402. New GM knowingly accepted the benefits of its unjust conduct.

16 403. As a result of New GM's conduct, the amount of its unjust enrichment
17 should be disgorged, in an amount according to proof.

18 | Illinois

COUNT XXIII

VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE

BUSINESS PRACTICES ACT

(815 ILCS 505/1, et seq. and 720 ILCS 295/1A)

23 404. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 405. This claim is brought only on behalf of Nationwide Class Members who
26 are Illinois residents (the “Illinois Class”).

27 406. New GM is a “person” as that term is defined in 815 ILCS 505/1(c).

28 | 407. Plaintiff and the Illinois Class are “consumers” as that term is defined in

1 815 ILCS 505/1(e).

2 408. The Illinois Consumer Fraud and Deceptive Business Practices Act
3 (“Illinois CFA”) prohibits “unfair or deceptive acts or practices, including but not
4 limited to the use or employment of any deception, fraud, false pretense, false
5 promise, misrepresentation or the concealment, suppression or omission of any
6 material fact, with intent that others rely upon the concealment, suppression or
7 omission of such material fact . . . in the conduct of trade or commerce . . . whether
8 any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

9 409. New GM participated in misleading, false, or deceptive acts that
10 violated the Illinois CFA. New GM engaged in deceptive business practices
11 prohibited by the Illinois CFA.

12 410. In the course of its business, New GM systematically devalued safety
13 and concealed defects in the class vehicles as described herein and otherwise
14 engaged in activities with a tendency or capacity to deceive. New GM also engaged
15 in unlawful trade practices by employing deception, deceptive acts or practices,
16 fraud, misrepresentations, or concealment, suppression or omission of any material
17 fact with intent that others rely upon such concealment, suppression or omission, in
18 connection with the sale of class vehicles.

19 411. From the date of its inception on July 11, 2009, New GM knew of many
20 defects affecting many models and years of the class vehicles, because of (i) the
21 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,
22 investigations, and notifications from regulatory authorities; and (iii) ongoing
23 performance of New GM’s TREAD Act obligations. New GM became aware of
24 other serious defects and systemic safety issues years ago, but concealed all of that
25 information.

26 412. New GM was also aware that it valued cost-cutting over safety, selected
27 parts from the cheapest supplier regardless of quality, and actively discouraged
28 employees from finding and flagging known safety defects, and that this approach

1 would necessarily cause the existence of more defects in the vehicles it designed and
2 manufactured and the failure to disclose and remedy defects in all class vehicles.

3 New GM concealed this information as well.

4 413. By failing to disclose and by actively concealing the many defects in the
5 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
6 presenting itself as a reputable manufacturer that valued safety and stood behind its
7 vehicles after they were sold, New GM engaged in unfair and deceptive business
8 practices in violation of the Illinois CFA.

9 414. In the course of New GM's business, it willfully failed to disclose and
10 actively concealed the dangerous risk posed by the defects discussed above. New
11 GM compounded the deception by repeatedly asserting that class vehicles were safe,
12 reliable, and of high quality, and by claiming to be a reputable manufacturer that
13 valued safety and stood behind its vehicles once they are on the road.

14 415. New GM's unfair or deceptive acts or practices were likely to and did in
15 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
16 reliability of the class vehicles, the quality of the GM brand, the devaluing of safety
17 at New GM, and the true value of the class vehicles.

18 416. New GM intentionally and knowingly misrepresented material facts
19 regarding the class vehicles with an intent to mislead Plaintiffs and the Illinois Class.

20 417. New GM knew or should have known that its conduct violated the
21 Illinois CFA.

22 418. As alleged above, New GM made material statements about the safety
23 and reliability of the class vehicles and the GM brand that were either false or
24 misleading.

25 419. New GM owed Plaintiffs a duty to disclose the true safety and reliability
26 of the class vehicles and the devaluing of safety at New GM, because New GM:

27 (a) Possessed exclusive knowledge that it valued cost-cutting over
28 safety, selected parts from the cheapest supplier regardless of quality, and actively

1 discouraged employees from finding and flagging known safety defects, and that this
2 approach would necessarily cause the existence of more defects in the vehicles it
3 designed and manufactured;

4 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

5 (c) Made incomplete representations about the safety and reliability
6 of the class vehicles generally, and the valve guide defects in particular, while
7 purposefully withholding material facts from Plaintiffs that contradicted these
8 representations.

9 420. Because New GM fraudulently concealed the defects in the class
10 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
11 attached to those vehicles by New GM's conduct, they are now worth significantly
12 less than they otherwise would be.

13 421. New GM's systemic devaluation of safety and its concealment of the
14 defects in the class vehicles were material to Plaintiffs and the Illinois Class. A
15 vehicle made by a reputable manufacturer of vehicles is worth more than an
16 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
17 conceals defects rather than promptly remedying them.

18 422. Plaintiffs and the Illinois Class suffered ascertainable loss caused by
19 New GM's misrepresentations and its concealment of and failure to disclose material
20 information. Plaintiffs who purchased class vehicles after the date of New GM's
21 inception either would have paid less for their vehicles or would not have purchased
22 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
23 of New GM's misconduct.

24 423. Regardless of time of purchase or lease, no Plaintiffs would have
25 maintained and continued to drive their vehicles had they been aware of New GM's
26 misconduct. By contractually assuming TREAD Act responsibilities with respect to
27 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
28 those vehicles because the TREAD Act on its face only applies to vehicle

1 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
2 vehicle owners to refrain from unfair and deceptive acts or practices under the
3 Illinois CFA. And, in any event, all class vehicle owners suffered ascertainable loss
4 in the form of the diminished value of their vehicles as a result of New GM's
5 deceptive and unfair acts and practices made in the course of New GM's business.

6 424. As a direct and proximate result of New GM's violations of the Illinois
7 CFA, Plaintiffs and the Illinois Class have suffered injury-in-fact and/or actual
8 damage.

9 425. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Illinois Class seek
10 monetary relief against New GM in the amount of actual damages, as well as
11 punitive damages because New GM acted with fraud and/or malice and/or was
12 grossly negligent.

13 426. Plaintiffs also seek an order enjoining New GM's unfair and/or
14 deceptive acts or practices, punitive damages, and attorneys' fees, and any other just
15 and proper relief available under 815 ILCS § 505/1 et seq.

COUNT XXIV

FRAUD BY CONCEALMENT

18 427. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.

428. This claim is brought on behalf of Nationwide Class Members who are
Illinois residents (the “Illinois Class”).

429. New GM concealed and suppressed material facts concerning the quality of the class vehicles.

24 430. New GM concealed and suppressed material facts concerning the
25 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
26 studious avoidance of quality issues, and a shoddy design process.

27 431. New GM concealed and suppressed material facts concerning the
28 defects in the class vehicles, and that it valued cost-cutting over quality and took

1 steps to ensure that its employees did not reveal known defects to regulators or
2 consumers.

3 432. New GM did so in order to boost confidence in its vehicles and falsely
4 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
5 that New GM was a reputable manufacturer that stands behind its vehicles after they
6 are sold and that its vehicles are safe and reliable. The false representations were
7 material to consumers, both because they concerned the quality and safety of the
8 class vehicles and because the representations played a significant role in the value of
9 the vehicles.

10 433. New GM had a duty to disclose the many defects in the class vehicles
11 because they were known and/or accessible only to New GM, were in fact known to
12 New GM as of the time of its creation in 2009 and at every point thereafter, New GM
13 had superior knowledge and access to the facts, and New GM knew the facts were
14 not known to or reasonably discoverable by Plaintiffs and the Illinois Class. New
15 GM also had a duty to disclose because it made many general affirmative
16 representations about the safety, quality, and lack of defects in its vehicles, as set
17 forth above, which were misleading, deceptive and incomplete without the disclosure
18 of the additional facts set forth above regarding defects in the class vehicles. Having
19 volunteered to provide information to Plaintiffs, GM had the duty to disclose not just
20 the partial truth, but the entire truth. These omitted and concealed facts were material
21 because they directly impact the value of the class vehicles purchased or leased by
22 Plaintiffs and the Illinois Class.

23 434. New GM actively concealed and/or suppressed these material facts, in
24 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
25 image and cost New GM money, and it did so at the expense of Plaintiffs and the
26 Illinois Class.

27 435. On information and belief, New GM has still not made full and adequate
28 disclosure and continues to defraud Plaintiffs and the Illinois Class and conceal

1 material information regarding defects that exist in the class vehicles.

2 436. Plaintiffs and the Illinois Class were unaware of these omitted material
3 facts and would not have acted as they did if they had known of the concealed and/or
4 suppressed facts, in that they would not have purchased cars manufactured by New
5 GM; and/or they would not have purchased cars manufactured by Old GM in the
6 time after New GM had come into existence and had fraudulently opted to conceal,
7 and to misrepresent, the true facts about the vehicles; and/or would not have
8 continued to drive their vehicles or would have taken other affirmative steps.

9 Plaintiffs' and the Illinois Class's actions were justified. New GM was in exclusive
10 control of the material facts and such facts were not known to the public, Plaintiffs,
11 or the Illinois Class.

12 437. Because of the concealment and/or suppression of the facts, Plaintiffs
13 and the Illinois Class sustained damage because they own vehicles that diminished in
14 value as a result of New GM's concealment of, and failure to timely disclose, the
15 defects in the class vehicles and the quality issues engendered by New GM's
16 corporate policies. Had they been aware of the defects that existed in the class
17 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
18 New GM came into existence either would have paid less for their vehicles or would
19 not have purchased or leased them at all; and no Plaintiffs regardless of time of
20 purchase or lease would have maintained their vehicles.

21 438. The value of all Illinois Class Members' vehicles has diminished as a
22 result of New GM's fraudulent concealment of the defects which have tarnished the
23 Corvette brand and made any reasonable consumer reluctant to purchase any of the
24 class vehicles, let alone pay what otherwise would have been fair market value for
25 the vehicles.

26 439. Accordingly, New GM is liable to the Illinois Class for damages in an
27 amount to be proven at trial.

28 440. New GM's acts were done maliciously, oppressively, deliberately, with

1 intent to defraud, and in reckless disregard of Plaintiffs' and the Illinois Class's
2 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
3 of punitive damages in an amount sufficient to deter such conduct in the future,
4 which amount is to be determined according to proof.

5 **COUNT XV**

6 **THIRD-PARTY BENEFICIARY CLAIM**

7 441. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 442. This claim is brought only on behalf of Class members who are Illinois
10 residents (the "Illinois Class").

11 443. In the Sales Agreement through which New GM acquired substantially
12 all of the assets of New GM, New GM explicitly agreed as follows:

13 From and after the Closing, [New GM] shall comply with the
14 certification, reporting and recall requirements of the National Traffic
15 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
16 Recall Enhancement, Accountability and Documentation Act, the Clean
17 Air Act, the California Health and Safety Code and similar Laws, in
18 each case, to the extent applicable in respect of vehicles and vehicle
19 parts manufactured or distributed by [Old GM].

20 444. With the exception of the portion of the agreement that purports to
21 immunize New GM from its own independent misconduct with respect to cars and
22 parts made by Old GM, the Sales Agreement is a valid and binding contract.

23 445. But for New GM's covenant to comply with the TREAD Act with
24 respect to cars and parts made by Old GM, the TREAD Act would have no
25 application to New GM with respect to those cars and parts. That is because the
26 TREAD Act on its face imposes reporting and recall obligations only on the
27 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

28 446. Because New GM agreed to comply with the TREAD Act with respect

1 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
2 make quarterly submissions to NHTSA of “early warning reporting” data, including
3 incidents involving property damage, warranty claims, consumer complaints, and
4 field reports concerning failure, malfunction, lack of durability or other performance
5 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
6 underlying records on which the early warning reports are based and all records
7 containing information on malfunctions that may be related to motor vehicle safety.
8 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
9 or should know that a safety defect exists – including notifying NHTSA and
10 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
11 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

12 447. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
13 Old GM, are the clear intended beneficiaries of New GM’s agreement to comply
14 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
15 benefit of having a manufacturer responsible for monitoring the safety of their Old
16 GM vehicles and making certain that any known defects would be promptly
17 remedied.

18 448. Although the Sale Order which consummated New GM’s purchase of
19 Old GM purported to give New GM immunity from claims concerning vehicles or
20 parts made by Old GM, the bankruptcy court recently ruled that provision to be
21 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
22 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
23 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
24 Plaintiffs’ third-party beneficiary claim as it is based solely on New GM’s post-sale
25 breaches of the promise it made in the Sale Agreement.

26 449. New GM breached its covenant to comply with the TREAD Act with
27 respect to the class vehicles, as it failed to take action to remediate the defects at any
28 time, up to the present.

1 450. Plaintiffs and the Illinois Class were damaged as a result of New GM's
2 breach. Because of New GM's failure to timely remedy the defect in class vehicles,
3 the value of Old GM class vehicles has diminished in an amount to be determined at
4 trial.

COUNT XXVI

UNJUST ENRICHMENT

7 451. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 452. This claim is brought on behalf of members of the Illinois Class who
10 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
11 after New GM came into existence, and who purchased or leased class vehicles in the
12 time period before New GM came into existence, which cars were still on the road
13 after New GM came into existence (the “Illinois Unjust Enrichment Class”).

14 453. New GM has received and retained a benefit from the Plaintiffs and
15 inequity has resulted.

16 454. New GM has benefitted from selling and leasing defective cars,
17 including Certified Pre-Owned cars, whose value was artificially inflated by New
18 GM's concealment of defect issues that plagued class vehicles, for more than they
19 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
20 pay other costs.

455. With respect to the class vehicles purchased before New GM came into
existence that were still on the road after New GM came into existence and as to
which New GM had unjustly and unlawfully determined not to recall, New GM
benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
from its statements about the success of New GM.

26 456. Thus, all Illinois Unjust Enrichment Class Members conferred a benefit
27 on New GM.

28 || 457. It is inequitable for New GM to retain these benefits.

458. Plaintiffs were not aware about the true facts about class vehicles, and did not benefit from GM's conduct.

459. New GM knowingly accepted the benefits of its unjust conduct.

460. As a result of New GM's conduct, the amount of its unjust enrichment should be disgorged, in an amount according to proof.

Indiana

COUNT XXVII

VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT

(IND. CODE § 24-5-0.5-3)

10 461. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.

12 462. This claim is brought only on behalf of Nationwide Class Members who
13 are Indiana residents (the “Indiana Class”).

463. New GM is a “person” within the meaning of IND. CODE § 24-5-0.5-
2(2) and a “supplier” within the meaning of IND. CODE § 24-5-.05-2(a)(3).

16 464. Plaintiffs' and Indiana Class Members' purchases of the class vehicles
17 are "consumer transactions" within the meaning of IND. CODE § 24-5-.05-2(a)(1).

18 465. Indiana's Deceptive Consumer Sales Act ("Indiana DCSA") prohibits a
19 person from engaging in a "deceptive trade practice," which includes representing:
20 "(1) That such subject of a consumer transaction has sponsorship, approval,
21 performance, characteristics, accessories, uses, or benefits that they do not have, or
22 that a person has a sponsorship, approval, status, affiliation, or connection it does not
23 have; (2) That such subject of a consumer transaction is of a particular standard,
24 quality, grade, style or model, if it is not and if the supplier knows or should
25 reasonably know that it is not; ... (7) That the supplier has a sponsorship, approval or
26 affiliation in such consumer transaction that the supplier does not have, and which
27 the supplier knows or should reasonably know that the supplier does not have; ... (b)
28 Any representations on or within a product or its packaging or in advertising or

1 promotional materials which would constitute a deceptive act shall be the deceptive
2 act both of the supplier who places such a representation thereon or therein, or who
3 authored such materials, and such suppliers who shall state orally or in writing that
4 such representation is true if such other supplier shall know or have reason to know
5 that such representation was false."

6 466. New GM participated in misleading, false, or deceptive acts that
7 violated the Indiana DCSA. By systematically devaluing safety and concealing
8 defects in class vehicles, New GM engaged in deceptive business practices
9 prohibited by the Indiana DCSA. New GM also engaged in unlawful trade practices
10 by: (1) representing that the class vehicles have characteristics, uses, benefits, and
11 qualities which they do not have; (2) representing that the class vehicles are of a
12 particular standard and quality when they are not; (3) advertising the class vehicles
13 with the intent not to sell them as advertised; and (4) otherwise engaging in conduct
14 likely to deceive.

15 467. New GM's actions as set forth above occurred in the conduct of trade or
16 commerce.

17 468. In the course of its business, New GM systematically devalued safety
18 and concealed defects in the class vehicles as described herein and otherwise
19 engaged in activities with a tendency or capacity to deceive. New GM also engaged
20 in unlawful trade practices by employing deception, deceptive acts or practices,
21 fraud, misrepresentations, or concealment, suppression or omission of any material
22 fact with intent that others rely upon such concealment, suppression or omission, in
23 connection with the sale of class vehicles.

24 469. From the date of its inception on July 11, 2009, New GM knew of many
25 serious defects affecting many models and years of class vehicles, because of (i) the
26 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,
27 investigations, and notifications from regulatory authorities; and (iii) ongoing
28 performance of New GM's TREAD Act obligations. New GM became aware of

1 other serious defects and systemic safety issues years ago, but concealed all of that
2 information.

3 470. New GM was also aware that it valued cost-cutting over safety, selected
4 parts from the cheapest supplier regardless of quality, and actively discouraged
5 employees from finding and flagging known safety defects, and that this approach
6 would necessarily cause the existence of more defects in the vehicles it designed and
7 manufactured and the failure to disclose and remedy defects in all class vehicles.
8 New GM concealed this information as well.

9 471. By failing to disclose and by actively concealing the many defects in the
10 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
11 presenting itself as a reputable manufacturer that valued safety and stood behind its
12 vehicles after they were sold, New GM engaged in deceptive business practices in
13 violation of the Indiana DCSA.

14 472. In the course of New GM's business, it willfully failed to disclose and
15 actively concealed the dangerous risk posed by the defects discussed above. New
16 GM compounded the deception by repeatedly asserting that the class vehicles were
17 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
18 that valued safety and stood behind its vehicles once they are on the road.

19 473. New GM's unfair or deceptive acts or practices were likely to and did in
20 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
21 reliability of class vehicles, the quality of the New GM brand, the devaluing of safety
22 at New GM, and the true value of the class vehicles.

23 474. New GM intentionally and knowingly misrepresented material facts
24 regarding the class vehicles with an intent to mislead Plaintiffs and the Indiana Class.

25 475. New GM knew or should have known that its conduct violated the
26 Indiana DCSA.

27 476. As alleged above, New GM made material statements about the safety
28 and reliability of the class vehicles and the GM brand that were either false or

1 misleading.

2 477. New GM owed Plaintiffs a duty to disclose the true safety and reliability
3 of the class vehicles and the devaluing of safety at New GM, because New GM:

4 (a) Possessed exclusive knowledge that it valued cost-cutting over
5 safety, selected parts from the cheapest supplier regardless of quality, and actively
6 discouraged employees from finding and flagging known safety defects, and that this
7 approach would necessarily cause the existence of more defects in the vehicles it
8 designed and manufactured;

9 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

10 (c) Made incomplete representations about the safety and reliability
11 of the class vehicles generally, and the valve guide defects in particular, while
12 purposefully withholding material facts from Plaintiffs that contradicted these
13 representations.

14 478. Because New GM fraudulently concealed the defects in the class
15 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
16 attached to those vehicles by New GM's conduct, they are now worth significantly
17 less than they otherwise would be.

18 479. New GM's systemic devaluation of safety and its concealment of the
19 defects in the class vehicles were material to Plaintiffs and the Indiana Class. A
20 vehicle made by a reputable manufacturer of vehicles is worth more than an
21 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
22 conceals defects rather than promptly remedying them.

23 480. Plaintiffs and the Indiana Class suffered ascertainable loss caused by
24 New GM's misrepresentations and its concealment of and failure to disclose material
25 information. Plaintiffs who purchased class vehicles after the date of New GM's
26 inception either would have paid less for their vehicles or would not have purchased
27 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
28 of New GM's misconduct.

1 481. Regardless of time of purchase or lease, no Plaintiffs would have
2 maintained and continued to drive their vehicles had they been aware of New GM's
3 misconduct. By contractually assuming TREAD Act responsibilities with respect to
4 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
5 those vehicles because the TREAD Act on its face only applies to vehicle
6 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
7 vehicle owners to refrain from unfair and deceptive acts or practices under the
8 Indiana DCSA. And, in any event, all class vehicle owners suffered ascertainable
9 loss in the form of the diminished value of their vehicles as a result of New GM's
10 deceptive and unfair acts and practices made in the course of New GM's business.

11 482. As a direct and proximate result of New GM's violations of the Indiana
12 DCSA, Plaintiffs and the Indiana Class have suffered injury-in-fact and/or actual
13 damage.

483. Pursuant to IND. CODE § 24-5-0.5-4, Plaintiffs and the Indiana Class
seek monetary relief against New GM measured as the greater of (a) actual damages
in an amount to be determined at trial and (b) statutory damages in the amount of
\$500 for each Plaintiff and each Indiana Class member, including treble damages up
to \$1,000 for New GM's willfully deceptive acts.

19 484. Plaintiff also seeks punitive damages based on the outrageousness and
20 recklessness of the New GM's conduct and New GM's high net worth.

COUNT XXVIII

FRAUD BY CONCEALMENT

23 485. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 486. This claim is brought on behalf of Nationwide Class Members who are
26 Indiana residents (the “Indiana Class”).

27 487. New GM concealed and suppressed material facts concerning the
28 quality of the class vehicles.

1 488. New GM concealed and suppressed material facts concerning the
2 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
3 studious avoidance of quality issues, and a shoddy design process.

4 489. New GM concealed and suppressed material facts concerning the
5 defects in the class vehicles, and that it valued cost-cutting over quality and took
6 steps to ensure that its employees did not reveal known defects to regulators or
7 consumers.

8 490. New GM did so in order to boost confidence in its vehicles and falsely
9 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
10 that New GM was a reputable manufacturer that stands behind its vehicles after they
11 are sold and that its vehicles are safe and reliable. The false representations were
12 material to consumers, both because they concerned the quality and safety of the
13 class vehicles and because the representations played a significant role in the value of
14 the vehicles.

15 491. New GM had a duty to disclose the defects in the class vehicles because
16 they were known and/or accessible only to New GM, were in fact known to New
17 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
18 superior knowledge and access to the facts, and New GM knew the facts were not
19 known to or reasonably discoverable by Plaintiffs and the Indiana Class. New GM
20 also had a duty to disclose because it made many general affirmative representations
21 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
22 were misleading, deceptive and incomplete without the disclosure of the additional
23 facts set forth above regarding defects in the class vehicles. Having volunteered to
24 provide information to Plaintiffs, GM had the duty to disclose not just the partial
25 truth, but the entire truth. These omitted and concealed facts were material because
26 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
27 and the Indiana Class.

28 492. New GM actively concealed and/or suppressed these material facts, in

1 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
2 image and cost New GM money, and it did so at the expense of Plaintiffs and the
3 Indiana Class.

4 493. On information and belief, New GM has still not made full and adequate
5 disclosure and continues to defraud Plaintiffs and the Indiana Class and conceal
6 material information regarding defects that exist in the class vehicles.

7 494. Plaintiffs and the Indiana Class were unaware of these omitted material
8 facts and would not have acted as they did if they had known of the concealed and/or
9 suppressed facts, in that they would not have purchased cars manufactured by New
10 GM; and/or they would not have purchased cars manufactured by Old GM in the
11 time after New GM had come into existence and had fraudulently opted to conceal,
12 and to misrepresent, the true facts about the vehicles; and/or would not have
13 continued to drive their vehicles or would have taken other affirmative steps.
14 Plaintiffs' and the Indiana Class's actions were justified. New GM was in exclusive
15 control of the material facts and such facts were not known to the public, Plaintiffs,
16 or the Indiana Class.

17 495. Because of the concealment and/or suppression of the facts, Plaintiffs
18 and the Indiana Class sustained damage because they own vehicles that diminished
19 in value as a result of New GM's concealment of, and failure to timely disclose, the
20 defects in the class vehicles and the quality issues engendered by New GM's
21 corporate policies. Had they been aware of the defects that existed in the class
22 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
23 New GM came into existence either would have paid less for their vehicles or would
24 not have purchased or leased them at all; and no Plaintiffs regardless of time of
25 purchase or lease would have maintained their vehicles.

26 496. The value of all Indiana Class Members' vehicles has diminished as a
27 result of New GM's fraudulent concealment of the defects which have tarnished the
28 Corvette brand and made any reasonable consumer reluctant to purchase any of the

1 class vehicles, let alone pay what otherwise would have been fair market value for
2 the vehicles.

3 497. Accordingly, New GM is liable to the Indiana Class for damages in an
4 amount to be proven at trial.

5 498. New GM's acts were done maliciously, oppressively, deliberately, with
6 intent to defraud, and in reckless disregard of Plaintiffs' and the Indiana Class's
7 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
8 of punitive damages in an amount sufficient to deter such conduct in the future,
9 which amount is to be determined according to proof.

10 **COUNT XXIX**

11 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
12 **(IND. CODE § 26-1-2-314)**

13 499. Plaintiffs reallege and incorporate by reference all paragraphs as though
14 fully set forth herein.

15 500. This claim is brought only on behalf of Indiana residents who are
16 members of the Nationwide Class (the "Indiana Class").

17 501. New GM was a merchant with respect to motor vehicles within the
18 meaning of IND. CODE § 26-1-2-104(1).

19 502. Under IND. CODE § 26-1-2-314, a warranty that the class vehicles
20 were in merchantable condition was implied by law in the transactions when
21 Plaintiffs purchased or leased their class vehicles from New GM on or after July 11,
22 2009.

23 503. These vehicles, when sold and at all times thereafter, were not
24 merchantable and are not fit for the ordinary purpose for which cars are used.
25 Specifically, the class vehicles are inherently defective in that there are defects which
26 cause inordinate and unusual early wear and failure of engines.

27 504. New GM was provided notice of these issues by numerous complaints
28 filed against it, internal investigations, and by numerous individual letters and

1 communications sent by Plaintiffs and the Indiana Class.

2 505. As a direct and proximate result of New GM's breach of the implied
3 warranty of merchantability, Plaintiffs and the Indiana Class members have been
4 damaged in an amount to be proven at trial.

5 **COUNT XXX**

6 **THIRD-PARTY BENEFICIARY CLAIM**

7 506. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 507. This claim is brought only on behalf of Class members who are Indiana
10 residents (the "Indiana Class").

11 508. In the Sales Agreement through which New GM acquired substantially
12 all of the assets of New GM, New GM explicitly agreed as follows:

13 From and after the Closing, [New GM] shall comply with the
14 certification, reporting and recall requirements of the National Traffic
15 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
16 Recall Enhancement, Accountability and Documentation Act, the Clean
17 Air Act, the California Health and Safety Code and similar Laws, in
18 each case, to the extent applicable in respect of vehicles and vehicle
19 parts manufactured or distributed by [Old GM].

20 509. With the exception of the portion of the agreement that purports to
21 immunize New GM from its own independent misconduct with respect to cars and
22 parts made by Old GM, the Sales Agreement is a valid and binding contract.

23 510. But for New GM's covenant to comply with the TREAD Act with
24 respect to cars and parts made by Old GM, the TREAD Act would have no
25 application to New GM with respect to those cars and parts. That is because the
26 TREAD Act on its face imposes reporting and recall obligations only on the
27 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

28 511. Because New GM agreed to comply with the TREAD Act with respect

1 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
2 make quarterly submissions to NHTSA of “early warning reporting” data, including
3 incidents involving property damage, warranty claims, consumer complaints, and
4 field reports concerning failure, malfunction, lack of durability or other performance
5 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
6 underlying records on which the early warning reports are based and all records
7 containing information on malfunctions that may be related to motor vehicle safety.
8 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
9 or should know that a safety defect exists – including notifying NHTSA and
10 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
11 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

12 512. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
13 Old GM, are the clear intended beneficiaries of New GM’s agreement to comply
14 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
15 benefit of having a manufacturer responsible for monitoring the safety of their Old
16 GM vehicles and making certain that any known defects would be promptly
17 remedied.

18 513. Although the Sale Order which consummated New GM’s purchase of
19 Old GM purported to give New GM immunity from claims concerning vehicles or
20 parts made by Old GM, the bankruptcy court recently ruled that provision to be
21 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
22 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
23 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
24 Plaintiffs’ third-party beneficiary claim as it is based solely on New GM’s post-sale
25 breaches of the promise it made in the Sale Agreement.

26 514. New GM breached its covenant to comply with the TREAD Act with
27 respect to the class vehicles, as it failed to take action to remediate the defect at any
28 time, up to the present.

1 515. Plaintiffs and the Indiana Class were damaged as a result of New GM's
2 breach. Because of New GM's failure to timely remedy the defect in class vehicles,
3 the value of Old GM class vehicles has diminished in an amount to be determined at
4 trial.

COUNT XXXI

UNJUST ENRICHMENT

7 516. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 517. This claim is brought on behalf of members of the Indiana Class who
10 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
11 after New GM came into existence, and who purchased or leased class vehicles in the
12 time period before New GM came into existence, which cars were still on the road
13 after New GM came into existence (the “Indiana Unjust Enrichment Class”).

14 518. New GM has received and retained a benefit from the Plaintiffs and
15 inequity has resulted.

16 519. New GM has benefitted from selling and leasing defective cars,
17 including Certified Pre-Owned cars, whose value was artificially inflated by New
18 GM's concealment of defect issues that plagued class vehicles, for more than they
19 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
20 pay other costs.

520. With respect to the class vehicles purchased before New GM came into
existence that were still on the road after New GM came into existence and as to
which New GM had unjustly and unlawfully determined not to recall, New GM
benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
from its statements about the success of New GM.

521. Thus, all Indiana Unjust Enrichment Class Members conferred a benefit
on New GM.

28 || 522. It is inequitable for New GM to retain these benefits.

523. Plaintiffs were not aware about the true facts about class vehicles, and did not benefit from GM's conduct.

524. New GM knowingly accepted the benefits of its unjust conduct.

525. As a result of New GM's conduct, the amount of its unjust enrichment should be disgorged, in an amount according to proof.

Massachusetts

COUNT XXXII

DECEPTIVE ACTS OR PRACTICES PROHIBITED BY MASSACHUSETTS

LAW (MASS. GEN. LAWS CH. 93A, § 1, et seq.)

526. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

527. This claim is brought only on behalf of Nationwide Class Members who are Massachusetts residents (the “Massachusetts Class”).

528. New GM, Plaintiffs, and the Massachusetts Class are “persons” within the meaning of MASS. GEN. LAWS ch. 93A, § 1(a).

529. New GM engaged in “trade” or “commerce” within the meaning of MASS. GEN. LAWS ch. 93A, § 1(b).

530. Massachusetts law (the “Massachusetts Act”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” MASS. GEN. LAWS ch. 93A, § 2. New GM both participated in misleading, false, or deceptive acts that violated the Massachusetts Act. By systematically devaluing safety and concealing defects in the class vehicles, New GM engaged in deceptive business practices prohibited by the Massachusetts Act.

531. In the course of its business, New GM systematically devalued safety and concealed defects in class vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. New GM also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact

1 with intent that others rely upon such concealment, suppression or omission, in
2 connection with the sale of class vehicles.

3 532. From the date of its inception on July 11, 2009, New GM knew of many
4 serious defects affecting many models and years of class vehicles, because of (i) the
5 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,
6 investigations, and notifications from regulatory authorities; and (iii) ongoing
7 performance of New GM's TREAD Act obligations, as discussed above. New GM
8 became aware of other serious defects and systemic safety issues years ago, but
9 concealed all of that information.

10 533. New GM was also aware that it valued cost-cutting over safety, selected
11 parts from the cheapest supplier regardless of quality, and actively discouraged
12 employees from finding and flagging known safety defects, and that this approach
13 would necessarily cause the existence of more defects in the vehicles it designed and
14 manufactured and the failure to disclose and remedy defects in all class vehicles.
15 New GM concealed this information as well.

16 534. By failing to disclose and by actively concealing the many defects in
17 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
18 presenting itself as a reputable manufacturer that valued safety and stood behind its
19 vehicles after they were sold, New GM engaged in unfair and deceptive business
20 practices in violation of the Massachusetts Act.

21 535. In the course of New GM's business, it willfully failed to disclose and
22 actively concealed the dangerous risk posed by the many safety issues and serious
23 defects discussed above. New GM compounded the deception by repeatedly
24 asserting that class vehicles were safe, reliable, and of high quality, and by claiming
25 to be a reputable manufacturer that valued safety and stood behind its vehicles once
26 they are on the road.

27 536. New GM's unfair or deceptive acts or practices were likely to and did in
28 fact deceive reasonable consumers, including Plaintiffs, about the true safety and

1 reliability of class vehicles, the quality of the GM brand, the devaluing of safety at
2 New GM, and the true value of the class vehicles.

3 537. New GM intentionally and knowingly misrepresented material facts
4 regarding the class vehicles with an intent to mislead Plaintiffs and the
5 Massachusetts Class.

6 538. New GM knew or should have known that its conduct violated the
7 Massachusetts Act.

8 539. As alleged above, New GM made material statements about the safety
9 and reliability of the class vehicles and the GM brand that were either false or
10 misleading.

11 540. New GM owed Plaintiffs a duty to disclose the true safety and reliability
12 of the class vehicles and the devaluing of safety at New GM, because New GM:

13 (a) Possessed exclusive knowledge that it valued cost-cutting over
14 safety, selected parts from the cheapest supplier regardless of quality, and actively
15 discouraged employees from finding and flagging known safety defects, and that this
16 approach would necessarily cause the existence of more defects in the vehicles it
17 designed and manufactured;

18 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

19 (c) Made incomplete representations about the safety and reliability
20 of the class vehicles generally, and the ignition switch and other defects in particular,
21 while purposefully withholding material facts from Plaintiffs that contradicted these
22 representations.

23 541. Because New GM fraudulently concealed the many defects in the class
24 vehicles, resulting in a raft of negative publicity once the defects finally began to be
25 disclosed, the value of the class vehicles has greatly diminished. In light of the
26 stigma attached to those vehicles by New GM's conduct, they are now worth
27 significantly less than they otherwise would be.

28 542. New GM's systemic devaluation of safety and its concealment of

1 defects in class vehicles were material to Plaintiffs and the Massachusetts Class. A
2 vehicle made by a reputable manufacturer of safe vehicles is safer and worth more
3 than an otherwise comparable vehicle made by a disreputable manufacturer of unsafe
4 vehicles that conceals defects rather than promptly remedies them.

5 543. Plaintiffs and the Massachusetts Class suffered ascertainable loss caused
6 by New GM's misrepresentations and its concealment of and failure to disclose
7 material information. Plaintiffs who purchased class vehicles after the date of New
8 GM's inception either would have paid less for their vehicles or would not have
9 purchased or leased them at all. . For Plaintiffs who purchased Pre-Sale Defective
10 Ignition Switch Vehicles that were sold as "Certified Pre-Owned," they too either
11 would have paid less for their vehicles or would not have purchased them but for
12 New GM's violations of the Massachusetts Act.

13 544. Regardless of time of purchase or lease, no Plaintiffs would have
14 maintained and continued to drive their vehicles had they been aware of New GM's
15 misconduct. By contractually assuming TREAD Act responsibilities with respect to
16 Old GM vehicles, New GM effectively assumed the role of manufacturer of those
17 vehicles because the TREAD Act on its face only applies to vehicle manufacturers.
18 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM vehicle owners to
19 refrain from unfair and deceptive acts or practices under the Massachusetts Act. And,
20 in any event, all GM vehicle owners suffered ascertainable loss in the form of the
21 diminished value of their vehicles as a result of New GM's deceptive and unfair acts
22 and practices made in the course of New GM's business.

23 545. New GM's violations present a continuing risk to Plaintiffs as well as to
24 the general public. New GM's unlawful acts and practices complained of herein
25 affect the public interest.

26 546. As a direct and proximate result of New GM's violations of the
27 Massachusetts Act, Plaintiffs and the Massachusetts Class have suffered injury-in-
28 fact and/or actual damage.

1 547. Pursuant to MASS. GEN. LAWS ch. 93A, § 9, Plaintiffs and the
2 Massachusetts Class seek monetary relief against New GM measured as the greater
3 of (a) actual damages in an amount to be determined at trial and (b) statutory
4 damages in the amount of \$25 for each Plaintiff and each Massachusetts Class
5 member. Because New GM's conduct was committed willfully and knowingly,
6 Plaintiffs are entitled to recover, for each Plaintiff and each Massachusetts Class
7 member, up to three times actual damages, but no less than two times actual
8 damages.

9 548. Plaintiffs also seek an order enjoining New GM's unfair and/or
10 deceptive acts or practices, punitive damages, and attorneys' fees, costs, and any
11 other just and proper relief available under the Massachusetts Act.

12 549. On October 8, 2014, certain Plaintiffs sent a letter complying with
13 MASS. GEN. LAWS ch. 93A, § 9(3). Because New GM failed to remedy its
14 unlawful conduct within the requisite time period, Plaintiffs seek all damages and
15 relief to which Plaintiffs and the Massachusetts Class are entitled.

COUNT XXXIII

FRAUD BY CONCEALMENT

18 550. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.

20 551. This claim is brought on behalf of Nationwide Class Members who are
21 Massachusetts residents (the “Massachusetts Class”).

552. New GM concealed and suppressed material facts concerning the quality of its vehicles and the GM brand.

24 553. New GM concealed and suppressed material facts concerning the
25 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
26 studious avoidance of safety issues, and a shoddy design process.

27 554. New GM concealed and suppressed material facts concerning the many
28 serious defects plaguing class vehicles, and that it valued cost-cutting over safety and

1 took steps to ensure that its employees did not reveal known safety defects to
2 regulators or consumers.

3 555. New GM did so in order to boost confidence in its vehicles and falsely
4 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
5 that New GM was a reputable manufacturer that stands behind its vehicles after they
6 are sold and that its vehicles are safe and reliable. The false representations were
7 material to consumers, both because they concerned the quality and safety of the
8 class vehicles and because the representations played a significant role in the value of
9 the vehicles.

10 556. New GM had a duty to disclose the many defects in class vehicles
11 because they were known and/or accessible only to New GM, were in fact known to
12 New GM as of the time of its creation in 2009 and at every point thereafter, New GM
13 had superior knowledge and access to the facts, and New GM knew the facts were
14 not known to or reasonably discoverable by Plaintiffs and the Massachusetts Class.
15 New GM also had a duty to disclose because it made many general affirmative
16 representations about the safety, quality, and lack of defects in its vehicles, as set
17 forth above, which were misleading, deceptive and incomplete without the disclosure
18 of the additional facts set forth above regarding its actual safety record, safety
19 philosophy, and practices and the actual safety defects in its vehicles. Having
20 volunteered to provide information to Plaintiffs, GM had the duty to disclose not just
21 the partial truth, but the entire truth. These omitted and concealed facts were material
22 because they directly impact the value of the class vehicles purchased or leased by
23 Plaintiffs and the Massachusetts Class. Whether a manufacturer's products are safe
24 and reliable, and whether that manufacturer stands behind its products, are material
25 concerns to a consumer.

26 557. New GM actively concealed and/or suppressed these material facts, in
27 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
28 image and cost New GM money, and it did so at the expense of Plaintiffs and the

1 Massachusetts Class.

2 558. On information and belief, New GM has still not made full and adequate
3 disclosure and continues to defraud Plaintiffs and the Massachusetts Class and
4 conceal material information regarding defects that exist in class vehicles.

5 559. Plaintiffs and the Massachusetts Class were unaware of these omitted
6 material facts and would not have acted as they did if they had known of the
7 concealed and/or suppressed facts, in that they would not have purchased cars
8 manufactured by New GM; and/or they would not have purchased cars manufactured
9 by Old GM in the time after New GM had come into existence and had fraudulently
10 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
11 not have continued to drive their vehicles or would have taken other affirmative
12 steps. Plaintiffs' and the Massachusetts Class's actions were justified. New GM was
13 in exclusive control of the material facts and such facts were not known to the public,
14 Plaintiffs, or the Massachusetts Class.

15 560. Because of the concealment and/or suppression of the facts, Plaintiffs
16 and the Massachusetts Class sustained damage because they own vehicles that
17 diminished in value as a result of New GM's concealment of, and failure to timely
18 disclose, the serious defects in the class vehicles and the serious safety and quality
19 issues engendered by New GM's corporate policies. Had they been aware of the
20 many defects that existed in class vehicles, and the company's callous disregard for
21 safety, Plaintiffs who purchased new or Certified Previously Owned vehicles after
22 New GM came into existence either would have paid less for their vehicles or would
23 not have purchased or leased them at all; and no Plaintiffs regardless of time of
24 purchase or lease would have maintained their vehicles.

25 561. The value of all Massachusetts Class Members' vehicles has diminished
26 as a result of New GM's fraudulent concealment of the many defects and its systemic
27 safety issues which have greatly tarnished the GM brand and made any reasonable
28 consumer reluctant to purchase any of the class vehicles, let alone pay what

1 otherwise would have been fair market value for the vehicles.

2 562. Accordingly, New GM is liable to the Massachusetts Class for damages
3 in an amount to be proven at trial.

4 563. New GM's acts were done maliciously, oppressively, deliberately, with
5 intent to defraud, and in reckless disregard of Plaintiffs' and the Massachusetts
6 Class's rights and well-being to enrich New GM. New GM's conduct warrants an
7 assessment of punitive damages in an amount sufficient to deter such conduct in the
8 future, which amount is to be determined according to proof.

9 **COUNT XXXIV**

10 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

11 **(ALM GL. CH. 106, § 2-314)**

12 564. Plaintiffs reallege and incorporate by reference all paragraphs as though
13 fully set forth herein.

14 565. New GM was a merchant with respect to motor vehicles within the
15 meaning of ALM GL CH. 106, § 2-104(1).

16 566. Under ALM GL CH. 106, § 2-314, a warranty that the class vehicles
17 were in merchantable condition was implied by law in the transactions when
18 Plaintiffs purchased or leased their class vehicles from New GM on or after July 11,
19 2009.

20 567. These vehicles, when sold and at all times thereafter, were not
21 merchantable and are not fit for the ordinary purpose for which cars are used.
22 Specifically, the class vehicles are inherently defective in that there are defects which
23 cause inordinate and unusual early wear and failure of engines.

24 568. New GM was provided notice of these issues by numerous complaints
25 filed against it, internal investigations, and by numerous individual letters and
26 communications sent by Plaintiffs and the Massachusetts Class.

27 569. As a direct and proximate result of New GM's breach of the implied
28 warranty of merchantability, Plaintiffs and the Massachusetts Class members have

1 been damaged in an amount to be proven at trial.

2 **COUNT XXXV**

3 **THIRD-PARTY BENEFICIARY CLAIM**

4 570. Plaintiffs reallege and incorporate by reference all paragraphs as though
5 fully set forth herein.

6 571. This claim is brought only on behalf of Class members who are
7 Massachusetts residents (the "Massachusetts Class").

8 572. In the Sales Agreement through which New GM acquired substantially
9 all of the assets of New GM, New GM explicitly agreed as follows:

10 From and after the Closing, [New GM] shall comply with the
11 certification, reporting and recall requirements of the National Traffic
12 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
13 Recall Enhancement, Accountability and Documentation Act, the Clean
14 Air Act, the California Health and Safety Code and similar Laws, in
15 each case, to the extent applicable in respect of vehicles and vehicle
16 parts manufactured or distributed by [Old GM].

17 573. With the exception of the portion of the agreement that purports to
18 immunize New GM from its own independent misconduct with respect to cars and
19 parts made by Old GM, the Sales Agreement is a valid and binding contract.

20 574. But for New GM's covenant to comply with the TREAD Act with
21 respect to cars and parts made by Old GM, the TREAD Act would have no
22 application to New GM with respect to those cars and parts. That is because the
23 TREAD Act on its face imposes reporting and recall obligations only on the
24 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

25 575. Because New GM agreed to comply with the TREAD Act with respect
26 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
27 make quarterly submissions to NHTSA of "early warning reporting" data, including
28 incidents involving death, injury, or property damage, warranty claims, consumer

1 complaints, and field reports concerning failure, malfunction, lack of durability or
2 other performance issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b)
3 retain for five years all underlying records on which the early warning reports are
4 based and all records containing information on malfunctions that may be related to
5 motor vehicle safety. See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate
6 remedial action if it knows or should know that a safety defect exists – including
7 notifying NHTSA and consumers and ordering a recall if necessary. See 49 U.S.C. §
8 30118(c); 49 C.F.R. § 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

9 576. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
10 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
11 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
12 benefit of having a manufacturer responsible for monitoring the safety of their Old
13 GM vehicles and making certain that any known safety defects would be promptly
14 remedied.

15 577. Although the Sale Order which consummated New GM's purchase of
16 Old GM purported to give New GM immunity from claims concerning vehicles or
17 parts made by Old GM, the bankruptcy court recently ruled that provision to be
18 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
19 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
20 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
21 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
22 breaches of the promise it made in the Sale Agreement.

23 578. New GM breached its covenant to comply with the TREAD Act with
24 respect to the class vehicles, as it failed to take action to remediate the defect at any
25 time, up to the present.

26 579. Plaintiffs and the Massachusetts were damaged as a result of New GM's
27 breach. Because of New GM's failure to timely remedy the defect in class vehicles,
28 the value of Old GM class vehicles has diminished in an amount to be determined at

1 trial.

2 **COUNT XXXVI**
3 **UNJUST ENRICHMENT**

4 580. Plaintiffs reallege and incorporate by reference all paragraphs as though
5 fully set forth herein.

6 581. This claim is brought on behalf of members of the Massachusetts Class
7 who purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time
8 period after New GM came into existence, and who purchased or leased class
9 vehicles in the time period before New GM came into existence, which cars were
10 still on the road after New GM came into existence (the “Massachusetts Unjust
11 Enrichment Class”).

12 582. New GM has received and retained a benefit from the Plaintiffs and
13 inequity has resulted.

14 583. New GM has benefitted from selling and leasing defective cars,
15 including Certified Pre-Owned cars, whose value was artificially inflated by New
16 GM’s concealment of systemic safety issues that plagued the class vehicle, for more
17 than they were worth, at a profit, and Plaintiffs have overpaid for the cars and been
18 forced to pay other costs.

19 584. With respect to the class vehicles purchased before New GM came into
20 existence that were still on the road after New GM came into existence and as to
21 which New GM had unjustly and unlawfully determined not to recall, New GM
22 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
23 from its statements about the success of New GM.

24 585. Thus, all Massachusetts Unjust Enrichment Class Members conferred a
25 benefit on New GM.

26 586. It is inequitable for New GM to retain these benefits.

27 587. Plaintiffs were not aware about the true facts about class vehicles, and
28 did not benefit from GM’s conduct.

1 588. New GM knowingly accepted the benefits of its unjust conduct.

2 589. As a result of New GM's conduct, the amount of its unjust enrichment
3 should be disgorged, in an amount according to proof.

4 **Michigan**

5 **COUNT XXXVII**

6 **VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT**
7 **(MICH. COMP. LAWS § 445.903, et seq.)**

8 590. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 591. This claim is brought only on behalf of Nationwide Class Members who
11 are Michigan residents (the "Michigan Class").

12 592. Plaintiffs and the Michigan Class Members were "person[s]" within the
13 meaning of the MICH. COMP. LAWS § 445.902(1)(d).

14 593. At all relevant times hereto, New GM was a "person" engaged in "trade
15 or commerce" within the meaning of the MICH. COMP. LAWS § 445.902(1)(d) and
16 (g).

17 594. The Michigan Consumer Protection Act ("Michigan CPA") prohibits
18 "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of
19 trade or commerce" MICH. COMP. LAWS § 445.903(1). New GM engaged in
20 unfair, unconscionable, or deceptive methods, acts or practices prohibited by the
21 Michigan CPA, including: "(c) Representing that goods or services have . . .
22 characteristics . . . that they do not have . . .;” "(e) Representing that goods or
23 services are of a particular standard . . . if they are of another;" "(i) Making false or
24 misleading statements of fact concerning the reasons for, existence of, or amounts of
25 price reductions;" "(s) Failing to reveal a material fact, the omission of which tends
26 to mislead or deceive the consumer, and which fact could not reasonably be known
27 by the consumer;" "(bb) Making a representation of fact or statement of fact material
28 to the transaction such that a person reasonably believes the represented or suggested

1 state of affairs to be other than it actually is;" and "(cc) Failing to reveal facts that are
2 material to the transaction in light of representations of fact made in a positive
3 manner." MICH. COMP. LAWS § 445.903(1). By systematically devaluing safety
4 and concealing defects in the class vehicles, New GM participated in unfair,
5 deceptive, and unconscionable acts that violated the Michigan CPA.

6 595. In the course of its business, New GM systematically devalued safety
7 and concealed defects in the class vehicles as described herein and otherwise
8 engaged in activities with a tendency or capacity to deceive. New GM also engaged
9 in unlawful trade practices by employing deception, deceptive acts or practices,
10 fraud, misrepresentations, or concealment, suppression or omission of any material
11 fact with intent that others rely upon such concealment, suppression or omission, in
12 connection with the sale of class vehicles.

13 596. From the date of its inception on July 11, 2009, New GM knew of many
14 serious defects affecting many models and years of class vehicles, because of (i) the
15 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,
16 investigations, and notifications from regulatory authorities; and (iii) ongoing
17 performance of New GM's TREAD Act obligations. New GM became aware of
18 other serious defects and systemic safety issues years ago, but concealed all of that
19 information.

20 597. New GM was also aware that it valued cost-cutting over safety, selected
21 parts from the cheapest supplier regardless of quality, and actively discouraged
22 employees from finding and flagging known safety defects, and that this approach
23 would necessarily cause the existence of more defects in the vehicles it designed and
24 manufactured and the failure to disclose and remedy defects in all the class vehicles.
25 New GM concealed this information as well.

26 598. By failing to disclose and by actively concealing the many defects in
27 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
28 presenting itself as a reputable manufacturer that valued safety and stood behind its

1 vehicles after they were sold, New GM engaged in unfair, unconscionable, and
2 deceptive business practices in violation of the Michigan CPA.

3 599. In the course of New GM's business, it willfully failed to disclose and
4 actively concealed the dangerous risk posed by the defects discussed above. New
5 GM compounded the deception by repeatedly asserting that class vehicles were safe,
6 reliable, and of high quality, and by claiming to be a reputable manufacturer that
7 valued safety and stood behind its vehicles once they are on the road.

8 600. New GM's unfair or deceptive acts or practices were likely to and did in
9 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
10 reliability of class vehicles, the quality of the GM brand, the devaluing of safety at
11 New GM, and the true value of the class vehicles.

12 601. New GM intentionally and knowingly misrepresented material facts
13 regarding the class vehicles with an intent to mislead Plaintiffs and the Michigan
14 Class.

15 602. New GM knew or should have known that its conduct violated the
16 Michigan CPA.

17 603. As alleged above, New GM made material statements about the safety
18 and reliability of the class vehicles and the GM brand that were either false or
19 misleading.

20 604. New GM owed Plaintiffs a duty to disclose the true safety and reliability
21 of the class vehicles and the devaluing of safety at New GM, because New GM:

22 (a) Possessed exclusive knowledge that it valued cost-cutting over
23 safety, selected parts from the cheapest supplier regardless of quality, and actively
24 discouraged employees from finding and flagging known safety defects, and that this
25 approach would necessarily cause the existence of more defects in the vehicles it
26 designed and manufactured;

27 (b) Intentionally concealed the foregoing from Plaintiffs; and/or
28 (c) Made incomplete representations about the safety and reliability

1 of the class vehicles generally, and the valve guide defects in particular, while
2 purposefully withholding material facts from Plaintiffs that contradicted these
3 representations.

4 605. Because New GM fraudulently concealed the defects in the class
5 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
6 attached to those vehicles by New GM's conduct, they are now worth significantly
7 less than they otherwise would be.

8 606. New GM's systemic devaluation of safety and its concealment of the
9 defects in the class vehicles were material to Plaintiffs and the Michigan Class. A
10 vehicle made by a reputable manufacturer of vehicles is worth more than an
11 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
12 conceals defects rather than promptly remedies them.

13 607. Plaintiffs and the Michigan Class suffered ascertainable loss caused by
14 New GM's misrepresentations and its concealment of and failure to disclose material
15 information. Plaintiffs who purchased class vehicles after the date of New GM's
16 inception either would have paid less for their vehicles or would not have purchased
17 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
18 of New GM's misconduct.

19 608. Regardless of time of purchase or lease, no Plaintiffs would have
20 maintained and continued to drive their vehicles had they been aware of New GM's
21 misconduct. By contractually assuming TREAD Act responsibilities with respect to
22 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
23 those vehicles because the TREAD Act on its face only applies to vehicle
24 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
25 vehicle owners to refrain from unfair and deceptive acts or practices under the
26 Michigan CPA. And, in any event, all class vehicle owners suffered ascertainable
27 loss in the form of the diminished value of their vehicles as a result of New GM's
28 deceptive and unfair acts and practices made in the course of New GM's business.

- 1 As a direct and proximate result of New GM's violations of the Michigan CPA,
- 2 Plaintiffs and the Michigan Class have suffered injury-in-fact and/or actual damage.

3 609. Plaintiffs seek injunctive relief to enjoin New GM from continuing its
4 unfair and deceptive acts; monetary relief against New GM measured as the greater
5 of (a) actual damages in an amount to be determined at trial and (b) statutory
6 damages in the amount of \$250 for Plaintiffs and each Michigan Class member;
7 reasonable attorneys' fees; and any other just and proper relief available under
8 MICH. COMP. LAWS § 445.911.

9 610. Plaintiffs also seek punitive damages against New GM because it
10 carried out despicable conduct with willful and conscious disregard of the rights and
11 safety of others. New GM intentionally and willfully misrepresented the safety and
12 reliability of the class vehicles, deceived Plaintiffs and Michigan Class Members on
13 life-or-death matters, and concealed material facts that only they knew, all to avoid
14 the expense and public relations nightmare of correcting a deadly flaw in vehicles it
15 repeatedly promised Plaintiffs and Michigan Class Members were safe. New GM's
16 unlawful conduct constitutes malice, oppression, and fraud warranting punitive
17 damages.

COUNT XXXVIII

FRAUD BY CONCEALMENT

20 611. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.

612. This claim is brought on behalf of Nationwide Class Members who are Michigan residents (the “Michigan Class”).

24 613. New GM concealed and suppressed material facts concerning the
25 quality of the class vehicles.

614. New GM concealed and suppressed material facts concerning the
culture of New GM – a culture characterized by an emphasis on cost-cutting, the
studious avoidance of quality issues, and a shoddy design process.

1 615. New GM concealed and suppressed material facts concerning the
2 defects in the class vehicles, and that it valued cost-cutting over quality and took
3 steps to ensure that its employees did not reveal known defects to regulators or
4 consumers.

5 616. New GM did so in order to boost confidence in its vehicles and falsely
6 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
7 that New GM was a reputable manufacturer that stands behind its vehicles after they
8 are sold and that its vehicles are safe and reliable. The false representations were
9 material to consumers, both because they concerned the quality and safety of the
10 class vehicles and because the representations played a significant role in the value of
11 the vehicles.

12 617. New GM had a duty to disclose the defects in the class vehicles because
13 they were known and/or accessible only to New GM, were in fact known to New
14 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
15 superior knowledge and access to the facts, and New GM knew the facts were not
16 known to or reasonably discoverable by Plaintiffs and the Michigan Class. New GM
17 also had a duty to disclose because it made many general affirmative representations
18 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
19 were misleading, deceptive and incomplete without the disclosure of the additional
20 facts set forth above regarding defects in the class vehicles. Having volunteered to
21 provide information to Plaintiffs, GM had the duty to disclose not just the partial
22 truth, but the entire truth. These omitted and concealed facts were material because
23 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
24 and the Michigan Class.

25 618. New GM actively concealed and/or suppressed these material facts, in
26 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
27 image and cost New GM money, and it did so at the expense of Plaintiffs and the
28 Michigan Class.

1 619. On information and belief, New GM has still not made full and adequate
2 disclosure and continues to defraud Plaintiffs and the Michigan Class and conceal
3 material information regarding defects that exist in the class vehicles.

4 620. Plaintiffs and the Michigan Class were unaware of these omitted
5 material facts and would not have acted as they did if they had known of the
6 concealed and/or suppressed facts, in that they would not have purchased cars
7 manufactured by New GM; and/or they would not have purchased cars manufactured
8 by Old GM in the time after New GM had come into existence and had fraudulently
9 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
10 not have continued to drive their vehicles or would have taken other affirmative
11 steps. Plaintiffs' and the Michigan Class's actions were justified. New GM was in
12 exclusive control of the material facts and such facts were not known to the public,
13 Plaintiffs, or the Michigan Class.

14 621. Because of the concealment and/or suppression of the facts, Plaintiffs
15 and the Michigan Class sustained damage because they own vehicles that diminished
16 in value as a result of New GM's concealment of, and failure to timely disclose, the
17 defects in the class vehicles and the quality issues engendered by New GM's
18 corporate policies. Had they been aware of the defects that existed in the class
19 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
20 New GM came into existence either would have paid less for their vehicles or would
21 not have purchased or leased them at all; and no Plaintiffs regardless of time of
22 purchase or lease would have maintained their vehicles.

23 622. The value of all Michigan Class Members' vehicles has diminished as a
24 result of New GM's fraudulent concealment of the defects which have tarnished the
25 Corvette brand and made any reasonable consumer reluctant to purchase any of the
26 class vehicles, let alone pay what otherwise would have been fair market value for
27 the vehicles.

28 623. Accordingly, New GM is liable to the Michigan Class for damages in an

1 amount to be proven at trial.

2 624. New GM's acts were done maliciously, oppressively, deliberately, with
3 intent to defraud, and in reckless disregard of Plaintiffs' and the Michigan Class's
4 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
5 of punitive damages in an amount sufficient to deter such conduct in the future,
6 which amount is to be determined according to proof.

COUNT XXXIX

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(MICH. COMP. LAWS § 440.2314)

10 625. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.

12 || 626. This claim is brought only on behalf of the Michigan Class.

13 627. New GM was a merchant with respect to motor vehicles within the
14 meaning of MICH. COMP. LAWS § 440.2314(1).

15 628. Under MICH. COMP. LAWS § 440.2314, a warranty that the class
16 vehicles were in merchantable condition was implied by law in the transactions when
17 Plaintiffs purchased or leased their class vehicles from New GM on or after July 11,
18 2009.

19 629. These vehicles, when sold and at all times thereafter, were not
20 merchantable and are not fit for the ordinary purpose for which cars are used.
21 Specifically, the class vehicles are inherently defective in that engines are subject to
22 unusual premature wear and catastrophic failure.

630. New GM was provided notice of these issues by numerous complaints
filed against it, internal investigations, and by numerous individual letters and
communications sent by Plaintiffs and the Michigan Class before or within a
reasonable amount of time after New GM issued the recall and the allegations of
vehicle defects became public.

²⁸ 631. As a direct and proximate result of New GM's breach of the implied

1 warranty of merchantability, Plaintiffs and the Michigan Class members have been
2 damaged in an amount to be proven at trial.

3 **COUNT XL**

4 **THIRD-PARTY BENEFICIARY CLAIM**

5 632. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 633. This claim is brought only on behalf of Class members who are
8 Michigan residents (the “Michigan Class”).

9 634. In the Sales Agreement through which New GM acquired substantially
10 all of the assets of New GM, New GM explicitly agreed as follows:

11 From and after the Closing, [New GM] shall comply with the
12 certification, reporting and recall requirements of the National Traffic
13 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
14 Recall Enhancement, Accountability and Documentation Act, the Clean
15 Air Act, the California Health and Safety Code and similar Laws, in
16 each case, to the extent applicable in respect of vehicles and vehicle
17 parts manufactured or distributed by [Old GM].

18 635. With the exception of the portion of the agreement that purports to
19 immunize New GM from its own independent misconduct with respect to cars and
20 parts made by Old GM, the Sales Agreement is a valid and binding contract.

21 636. But for New GM’s covenant to comply with the TREAD Act with
22 respect to cars and parts made by Old GM, the TREAD Act would have no
23 application to New GM with respect to those cars and parts. That is because the
24 TREAD Act on its face imposes reporting and recall obligations only on the
25 “manufacturers” of a vehicle. 49 U.S.C. § 30118(c).

26 637. Because New GM agreed to comply with the TREAD Act with respect
27 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
28 make quarterly submissions to NHTSA of “early warning reporting” data, including

1 incidents involving property damage, warranty claims, consumer complaints, and
2 field reports concerning failure, malfunction, lack of durability or other performance
3 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
4 underlying records on which the early warning reports are based and all records
5 containing information on malfunctions that may be related to motor vehicle safety.
6 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
7 or should know that a safety defect exists – including notifying NHTSA and
8 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
9 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

10 638. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
11 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
12 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
13 benefit of having a manufacturer responsible for monitoring the safety of their Old
14 GM vehicles and making certain that any known defects would be promptly
15 remedied.

16 639. Although the Sale Order which consummated New GM's purchase of
17 Old GM purported to give New GM immunity from claims concerning vehicles or
18 parts made by Old GM, the bankruptcy court recently ruled that provision to be
19 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
20 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
21 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
22 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
23 breaches of the promise it made in the Sale Agreement.

24 640. New GM breached its covenant to comply with the TREAD Act with
25 respect to the class vehicles, as it failed to take action to remediate the defects at any
26 time, up to the present.

27 641. Plaintiffs and the Michigan Class were damaged as a result of New
28 GM's breach. Because of New GM's failure to timely remedy the defect in class

1 vehicles, the value of Old GM class vehicles has diminished in an amount to be
2 determined at trial.

3 **COUNT XLI**

4 **UNJUST ENRICHMENT**

5 642. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 643. This claim is brought on behalf of members of the Michigan Class who
8 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
9 after New GM came into existence, and who purchased or leased class vehicles in the
10 time period before New GM came into existence, which cars were still on the road
11 after New GM came into existence (the “Michigan Unjust Enrichment Class”).

12 644. New GM has received and retained a benefit from the Plaintiffs and
13 inequity has resulted.

14 645. New GM has benefitted from selling and leasing defective cars,
15 including Certified Pre-Owned cars, whose value was artificially inflated by New
16 GM’s concealment of defect issues that plagued the class vehicles for more than they
17 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
18 pay other costs.

19 646. With respect to the class vehicles purchased before New GM came into
20 existence that were still on the road after New GM came into existence and as to
21 which New GM had unjustly and unlawfully determined not to recall, New GM
22 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
23 from its statements about the success of New GM.

24 647. Thus, all Michigan Unjust Enrichment Class Members conferred a
25 benefit on New GM.

26 648. It is inequitable for New GM to retain these benefits.

27 649. Plaintiffs were not aware about the true facts about class vehicles, and
28 did not benefit from GM’s conduct.

KNAPP,
PETERSEN
& CLARKE

650. New GM knowingly accepted the benefits of its unjust conduct. As a result of New GM's conduct, the amount of its unjust enrichment should be disgorged, in an amount according to proof.

Montana

COUNT XLII

VIOLATION OF MONTANA UNFAIR TRADE PRACTICES

AND CONSUMER PROTECTION ACT OF 1973

(MONT. CODE ANN. § 30-14-101, et seq.)

9 651. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 652. This claim is brought only on behalf of Nationwide Class Members who
12 are Montana residents (the “Montana Class”).

13 653. New GM, Plaintiffs and the Montana Class are “persons” within the
14 meaning of MONT. CODE ANN. § 30-14-102(6).

15 654. Montana Class Members are “consumer[s]” under MONT. CODE
16 ANN. § 30-14- 102(1).

17 655. The sale or lease of the class vehicles to Montana Class Members
18 occurred within “trade and commerce” within the meaning of MONT. CODE ANN.
19 § 30-14-102(8), and New GM committed deceptive and unfair acts in the conduct of
20 “trade and commerce” as defined in that statutory section.

21 656. The Montana Unfair Trade Practices and Consumer Protection Act
22 (“Montana CPA”) makes unlawful any “unfair methods of competition and unfair or
23 deceptive acts or practices in the conduct of any trade or commerce.” MONT. CODE
24 ANN. § 30-14-103. By systematically devaluing safety and concealing defects in the
25 class vehicles, New GM engaged in unfair and deceptive acts or practices in
26 violation of the Montana CPA.

657. In the course of its business, New GM systematically devalued safety
and concealed defects in class vehicles as described herein and otherwise engaged in

1 activities with a tendency or capacity to deceive. New GM also engaged in unlawful
2 trade practices by employing deception, deceptive acts or practices, fraud,
3 misrepresentations, or concealment, suppression or omission of any material fact
4 with intent that others rely upon such concealment, suppression or omission, in
5 connection with the sale of the class vehicles.

6 658. From the date of its inception on July 11, 2009, New GM knew of many
7 serious defects affecting many models and years of the class vehicles, because of (i)
8 the knowledge of Old GM personnel who remained at New GM; (ii) continuous
9 reports, investigations, and notifications from regulatory authorities; and (iii)
10 ongoing performance of New GM's TREAD Act obligations. New GM became
11 aware of other serious defects and systemic safety issues years ago, but concealed all
12 of that information.

13 659. New GM was also aware that it valued cost-cutting over safety, selected
14 parts from the cheapest supplier regardless of quality, and actively discouraged
15 employees from finding and flagging known safety defects, and that this approach
16 would necessarily cause the existence of more defects in the vehicles it designed and
17 manufactured and the failure to disclose and remedy defects in all the class vehicles.
18 New GM concealed this information as well.

19 660. By failing to disclose and by actively concealing the many defects in the
20 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
21 presenting itself as a reputable manufacturer that valued safety and stood behind its
22 vehicles after they were sold, New GM engaged in unfair and deceptive business
23 practices in violation of the Montana CPA.

24 661. In the course of New GM's business, it willfully failed to disclose and
25 actively concealed the dangerous risk posed by the defects discussed above. New
26 GM compounded the deception by repeatedly asserting that the class vehicles were
27 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
28 that valued safety and stood behind its vehicles once they are on the road.

1 662. New GM's unfair or deceptive acts or practices were likely to and did in
2 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
3 reliability of class vehicles, the quality of the GM brand, the devaluing of safety at
4 New GM, and the true value of the class vehicles.

5 663. New GM intentionally and knowingly misrepresented material facts
6 regarding the class vehicles and the GM brand with an intent to mislead Plaintiffs
7 and the Montana Class.

8 664. New GM knew or should have known that its conduct violated the
9 Montana CPA.

10 665. As alleged above, New GM made material statements about the safety
11 and reliability of the class vehicles that were either false or misleading.

12 666. New GM owed Plaintiffs a duty to disclose the true safety and reliability
13 of the class vehicles and the devaluing of safety at New GM, because New GM:

14 (a) Possessed exclusive knowledge that it valued cost-cutting over
15 safety, selected parts from the cheapest supplier regardless of quality, and actively
16 discouraged employees from finding and flagging known safety defects, and that this
17 approach would necessarily cause the existence of more defects in the vehicles it
18 designed and manufactured;

19 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

20 (c) Made incomplete representations about the safety and reliability
21 of the class vehicles generally, and the valve guide defects in particular, while
22 purposefully withholding material facts from Plaintiffs that contradicted these
23 representations.

24 667. Because New GM fraudulently concealed the many defects in the class
25 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
26 attached to those vehicles by New GM's conduct, they are now worth significantly
27 less than they otherwise would be.

28 668. New GM's systemic devaluation of safety and its concealment of the

1 defects in the class vehicles were material to Plaintiffs and the Montana Class. A
2 vehicle made by a reputable manufacturer of vehicles is worth more than an
3 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
4 conceals defects rather than promptly remedies them.

5 669. Plaintiffs and the Montana Class suffered ascertainable loss caused by
6 New GM's misrepresentations and its concealment of and failure to disclose material
7 information. Plaintiffs who purchased the class vehicles after the date of New GM's
8 inception either would have paid less for their vehicles or would not have purchased
9 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
10 of New GM's misconduct.

11 670. Regardless of time of purchase or lease, no Plaintiffs would have
12 maintained and continued to drive their vehicles had they been aware of New GM's
13 misconduct. By contractually assuming TREAD Act responsibilities with respect to
14 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
15 those vehicles because the TREAD Act on its face only applies to vehicle
16 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
17 vehicle owners to refrain from unfair and deceptive acts or practices under the
18 Montana CPA. And, in any event, all class vehicle owners suffered ascertainable
19 loss in the form of the diminished value of their vehicles as a result of New GM's
20 deceptive and unfair acts and practices made in the course of New GM's business.

21 671. As a direct and proximate result of New GM's violations of the
22 Montana CPA, Plaintiffs and the Montana Class have suffered injury-in-fact and/or
23 actual damage.

24 672. Because the New GM's unlawful methods, acts, and practices have
25 caused Montana Class Members to suffer an ascertainable loss of money and
26 property, the Montana Class seeks from New GM actual damages or \$500,
27 whichever is greater, discretionary treble damages, reasonable attorneys' fees, an
28 order enjoining New GM's unfair, unlawful, and/or deceptive practices, and any

1 other relief the Court considers necessary or proper, under MONT. CODE ANN. §
2 30-14-133.

3 **COUNT XLIII**

4 **FRAUD BY CONCEALMENT**

5 673. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 674. This claim is brought on behalf of Nationwide Class Members who are
8 Montana residents (the “Montana Class”).

9 675. New GM concealed and suppressed material facts concerning the
10 quality of the class vehicles.

11 676. New GM concealed and suppressed material facts concerning the
12 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
13 studious avoidance of quality issues, and a shoddy design process.

14 677. New GM concealed and suppressed material facts concerning the
15 defects in the class vehicles, and that it valued cost-cutting over quality and took
16 steps to ensure that its employees did not reveal known defects to regulators or
17 consumers.

18 678. New GM did so in order to boost confidence in its vehicles and falsely
19 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
20 that New GM was a reputable manufacturer that stands behind its vehicles after they
21 are sold and that its vehicles are safe and reliable. The false representations were
22 material to consumers, both because they concerned the quality and safety of the
23 class vehicles and because the representations played a significant role in the value of
24 the vehicles.

25 679. New GM had a duty to disclose the defects in the class vehicles because
26 they were known and/or accessible only to New GM, were in fact known to New
27 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
28 superior knowledge and access to the facts, and New GM knew the facts were not

1 known to or reasonably discoverable by Plaintiffs and the Montana Class. New GM
2 also had a duty to disclose because it made many general affirmative representations
3 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
4 were misleading, deceptive and incomplete without the disclosure of the additional
5 facts set forth above regarding defects in the class vehicles. Having volunteered to
6 provide information to Plaintiffs, GM had the duty to disclose not just the partial
7 truth, but the entire truth. These omitted and concealed facts were material because
8 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
9 and the Montana Class.

10 680. New GM actively concealed and/or suppressed these material facts, in
11 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
12 image and cost New GM money, and it did so at the expense of Plaintiffs and the
13 Montana Class.

14 681. On information and belief, New GM has still not made full and adequate
15 disclosure and continues to defraud Plaintiffs and the Montana Class and conceal
16 material information regarding defects that exist in the class vehicles.

17 682. Plaintiffs and the Montana Class were unaware of these omitted material
18 facts and would not have acted as they did if they had known of the concealed and/or
19 suppressed facts, in that they would not have purchased cars manufactured by New
20 GM; and/or they would not have purchased cars manufactured by Old GM in the
21 time after New GM had come into existence and had fraudulently opted to conceal,
22 and to misrepresent, the true facts about the vehicles; and/or would not have
23 continued to drive their vehicles or would have taken other affirmative steps.
24 Plaintiffs' and the Montana Class's actions were justified. New GM was in exclusive
25 control of the material facts and such facts were not known to the public, Plaintiffs,
26 or the Montana Class.

27 683. Because of the concealment and/or suppression of the facts, Plaintiffs
28 and the Montana Class sustained damage because they own vehicles that diminished

1 in value as a result of New GM's concealment of, and failure to timely disclose, the
2 defects in the class vehicles and the quality issues engendered by New GM's
3 corporate policies. Had they been aware of the defects that existed in the class
4 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
5 New GM came into existence either would have paid less for their vehicles or would
6 not have purchased or leased them at all; and no Plaintiffs regardless of time of
7 purchase or lease would have maintained their vehicles.

8 684. The value of all Montana Class Members' vehicles has diminished as a
9 result of New GM's fraudulent concealment of the defects which have tarnished the
10 Corvette brand and made any reasonable consumer reluctant to purchase any of the
11 class vehicles, let alone pay what otherwise would have been fair market value for
12 the vehicles.

13 685. Accordingly, New GM is liable to the Montana Class for damages in an
14 amount to be proven at trial.

15 686. New GM's acts were done maliciously, oppressively, deliberately, with
16 intent to defraud, and in reckless disregard of Plaintiffs' and the Montana Class's
17 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
18 of punitive damages in an amount sufficient to deter such conduct in the future,
19 which amount is to be determined according to proof.

20 **COUNT XLIV**

21 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
22 **(MONT. CODE § 30-2-314)**

23 687. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 688. This claim is brought only on behalf of the Montana Class.

26 689. New GM was a merchant with respect to motor vehicles under MONT.
27 CODE § 30-2-104(1).

28 690. Under MONT. CODE § 30-2-314, a warranty that the class vehicles

1 were in merchantable condition was implied by law in the transactions when
2 Plaintiffs purchased or leased their class vehicles from New GM on or after July 11,
3 2009.

4 691. These vehicles, when sold and at all times thereafter, were not
5 merchantable and are not fit for the ordinary purpose for which cars are used.
6 Specifically, the class vehicles are inherently defective in that engines are subject to
7 unusual premature wear and catastrophic failure.

8 692. New GM was provided notice of these issues by numerous complaints
9 filed against it, internal investigations, and by numerous individual letters and
10 communications sent by Plaintiffs and the Montana Class before or within a
11 reasonable amount of time after New GM issued the recall and the allegations of
12 vehicle defects became public.

13 693. As a direct and proximate result of New GM's breach of the warranties
14 of merchantability, Plaintiffs and the Montana Class members have been damaged in
15 an amount to be proven at trial.

16 **COUNT XLV**

17 **THIRD-PARTY BENEFICIARY CLAIM**

18 694. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.

20 695. This claim is brought only on behalf of Class members who are
21 Montana residents (the "Montana Class").

22 696. In the Sales Agreement through which New GM acquired substantially
23 all of the assets of New GM, New GM explicitly agreed as follows:

24 From and after the Closing, [New GM] shall comply with the
25 certification, reporting and recall requirements of the National Traffic
26 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
27 Recall Enhancement, Accountability and Documentation Act, the Clean
28 Air Act, the California Health and Safety Code and similar Laws, in

1 each case, to the extent applicable in respect of vehicles and vehicle
2 parts manufactured or distributed by [Old GM].

3 697. With the exception of the portion of the agreement that purports to
4 immunize New GM from its own independent misconduct with respect to cars and
5 parts made by Old GM, the Sales Agreement is a valid and binding contract.

6 698. But for New GM's covenant to comply with the TREAD Act with
7 respect to cars and parts made by Old GM, the TREAD Act would have no
8 application to New GM with respect to those cars and parts. That is because the
9 TREAD Act on its face imposes reporting and recall obligations only on the
10 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

11 699. Because New GM agreed to comply with the TREAD Act with respect
12 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a) make quarterly submissions to NHTSA of "early warning reporting" data, including
13 incidents involving property damage, warranty claims, consumer complaints, and
14 field reports concerning failure, malfunction, lack of durability or other performance
15 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
16 underlying records on which the early warning reports are based and all records
17 containing information on malfunctions that may be related to motor vehicle safety.
18 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
19 or should know that a safety defect exists – including notifying NHTSA and
20 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
21 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

22 700. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
23 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
24 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
25 benefit of having a manufacturer responsible for monitoring the safety of their Old
26 GM vehicles and making certain that any known defects would be promptly
27 remedied.

1 701. Although the Sale Order which consummated New GM's purchase of
2 Old GM purported to give New GM immunity from claims concerning vehicles or
3 parts made by Old GM, the bankruptcy court recently ruled that provision to be
4 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
5 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
6 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
7 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
8 breaches of the promise it made in the Sale Agreement.

9 702. New GM breached its covenant to comply with the TREAD Act with
10 respect to class vehicles, as it failed to take action to remediate the defects at any
11 time, up to the present.

12 703. Plaintiffs and the Montana Class were damaged as a result of New
13 GM's breach. Because of New GM's failure to timely remedy the defect in class
14 vehicles, the value of the Old GM vehicles has diminished in an amount to be
15 determined at trial.

COUNT XLVI

UNJUST ENRICHMENT

18 704. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.

20 705. This claim is brought on behalf of members of the Montana Class who
21 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
22 after New GM came into existence, and who purchased or leased class vehicles in the
23 time period before New GM came into existence, which cars were still on the road
24 after New GM came into existence (the “Montana Unjust Enrichment Class”).

25 706. New GM has received and retained a benefit from the Plaintiffs and
26 inequity has resulted.

707. New GM has benefitted from selling and leasing defective cars,
including Certified Pre-Owned cars, whose value was artificially inflated by New

1 GM's concealment of defect issues that plagued the class vehicles, for more than
2 they were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced
3 to pay other costs.

4 708. With respect to the class vehicles purchased before New GM came into
5 existence that were still on the road after New GM came into existence and as to
6 which New GM had unjustly and unlawfully determined not to recall, New GM
7 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
8 from its statements about the success of New GM.

9 709. Thus, all Montana Unjust Enrichment Class Members conferred a
10 benefit on New GM.

11 710. It is inequitable for New GM to retain these benefits.

12 711. Plaintiffs were not aware about the true facts about the class vehicles,
13 and did not benefit from GM's conduct.

14 712. New GM knowingly accepted the benefits of its unjust conduct.

15 713. As a result of New GM's conduct, the amount of its unjust enrichment
16 should be disgorged, in an amount according to proof.

17 **New Jersey**

18 **COUNT XLVII**

19 **VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT**

20 **(N.J. STAT. ANN. § 56:8-1, et seq.)**

21 714. Plaintiffs reallege and incorporate by reference all paragraphs as though
22 fully set forth herein.

23 715. This claim is brought only on behalf of Nationwide Class Members who
24 are New Jersey residents (the "New Jersey Class").

25 716. Plaintiffs, the New Jersey Class, and New GM are or were "persons"
26 within the meaning of N.J. STAT. ANN. § 56:8-1(d).

27 717. New GM engaged in "sales" of "merchandise" within the meaning of
28 N.J. STAT. ANN. § 56:8-1(c), (d).

1 718. The New Jersey Consumer Fraud Act (“New Jersey CFA”) makes
2 unlawful “[t]he act, use or employment by any person of any unconscionable
3 commercial practice, deception, fraud, false pretense, false promise,
4 misrepresentation, or the knowing concealment, suppression or omission of any
5 material fact with the intent that others rely upon such concealment, suppression or
6 omission, in connection with the sale or advertisement of any merchandise or real
7 estate, or with the subsequent performance of such person as aforesaid, whether or
8 not any person has in fact been misled, deceived or damaged thereby...” N.J. STAT.
9 ANN. § 56:8-2. New GM engaged in unconscionable or deceptive acts or practices
10 that violated the New Jersey CFA as described above and below, and did so with the
11 intent that Class Members rely upon their acts, concealment, suppression or
12 omissions.

13 719. In the course of its business, New GM systematically devalued safety
14 and concealed defects in the class vehicles as described herein and otherwise
15 engaged in activities with a tendency or capacity to deceive. New GM also engaged
16 in unlawful trade practices by employing deception, deceptive acts or practices,
17 fraud, misrepresentations, or concealment, suppression or omission of any material
18 fact with intent that others rely upon such concealment, suppression or omission, in
19 connection with the sale of class vehicles.

20 720. From the date of its inception on July 11, 2009, New GM knew of many
21 serious defects affecting many models and years of the class vehicles, because of (i)
22 the knowledge of Old GM personnel who remained at New GM; (ii) continuous
23 reports, investigations, and notifications from regulatory authorities; and (iii)
24 ongoing performance of New GM’s TREAD.

25 721. Act obligations, as discussed above. New GM became aware of other
26 serious defects and systemic safety issues years ago, but concealed all of that
27 information.

28 722. New GM was also aware that it valued cost-cutting over safety, selected

1 parts from the cheapest supplier regardless of quality, and actively discouraged
2 employees from finding and flagging known safety defects, and that this approach
3 would necessarily cause the existence of more defects in the vehicles it designed and
4 manufactured and the failure to disclose and remedy defects in all class vehicles.
5 New GM concealed this information as well.

6 723. By failing to disclose and by actively concealing the many defects in
7 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
8 presenting itself as a reputable manufacturer that valued safety and stood behind its
9 vehicles after they were sold, New GM engaged in deceptive business practices in
10 violation of the New Jersey CFA.

11 724. In the course of New GM's business, it willfully failed to disclose and
12 actively concealed the dangerous risk posed by the many safety issues and serious
13 defects discussed above. New GM compounded the deception by repeatedly
14 asserting that the class vehicles were safe, reliable, and of high quality, and by
15 claiming to be a reputable manufacturer that valued safety and stood behind its
16 vehicles once they are on the road.

17 725. New GM's unfair or deceptive acts or practices were likely to and did in
18 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
19 reliability of the class vehicles, the quality of the GM brand, the devaluing of safety
20 at New GM, and the true value of the class vehicles.

21 726. New GM intentionally and knowingly misrepresented material facts
22 regarding the class vehicles with an intent to mislead Plaintiffs and the New Jersey
23 Class.

24 727. New GM knew or should have known that its conduct violated the New
25 Jersey CFA.

26 728. As alleged above, New GM made material statements about the safety
27 and reliability of the class vehicles and the GM brand that were either false or
28 misleading.

1 729. New GM owed Plaintiffs a duty to disclose the true safety and reliability
2 of the class vehicles and the devaluing of safety at New GM, because New GM:
3 (a) Possessed exclusive knowledge that it valued cost-cutting over
4 safety, selected parts from the cheapest supplier regardless of quality, and actively
5 discouraged employees from finding and flagging known safety defects, and that this
6 approach would necessarily cause the existence of more defects in the vehicles it
7 designed and manufactured;
8 (b) Intentionally concealed the foregoing from Plaintiffs; and/or
9 (c) Made incomplete representations about the safety and reliability
10 of the class vehicles generally, and the ignition switch and other defects in particular,
11 while purposefully withholding material facts from Plaintiffs that contradicted these
12 representations.

13 730. Because New GM fraudulently concealed the many defects in the class
14 vehicles, resulting in negative publicity once the defects finally began to be
15 disclosed, the value of the class vehicles has greatly diminished. In light of the
16 stigma attached to those vehicles by New GM's conduct, they are now worth
17 significantly less than they otherwise would be.

18 731. New GM's systemic devaluation of safety and its concealment of
19 defects in class vehicles were material to Plaintiffs and the New Jersey Class. A
20 vehicle made by a reputable manufacturer is worth more than an otherwise
21 comparable vehicle made by a disreputable manufacturer of unsafe vehicles that
22 conceals defects rather than promptly remedies them.

23 732. Plaintiffs and the New Jersey Class suffered ascertainable loss caused
24 by New GM's misrepresentations and its concealment of and failure to disclose
25 material information. Plaintiffs who purchased class vehicles after the date of New
26 GM's inception either would have paid less for their vehicles or would not have
27 purchased or leased them at all. For Plaintiffs who purchased class vehicles that
28 were sold as "Certified Pre-Owned," they too either would have paid less for their

1 vehicles or would not have purchased them but for New GM's violations of the New
2 Jersey CFA.

3 733. Regardless of time of purchase or lease, no Plaintiffs would have
4 maintained and continued to drive their vehicles had they been aware of New GM's
5 misconduct. By contractually assuming TREAD Act responsibilities with respect to
6 Old GM vehicles, New GM effectively assumed the role of manufacturer of those
7 vehicles because the TREAD Act on its face only applies to vehicle manufacturers.
8 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM vehicle owners to
9 refrain from unfair and deceptive acts or practices under the New Jersey CFA. And,
10 in any event, all GM vehicle owners suffered ascertainable loss in the form of the
11 diminished value of their vehicles as a result of New GM's deceptive and unfair acts
12 and practices that occurred in the course of New GM's business.

13 734. New GM's violations present a continuing risk to Plaintiffs as well as to
14 the general public. New GM's unlawful acts and practices complained of herein
15 affect the public interest.

16 735. As a direct and proximate result of New GM's violations of the New
17 Jersey CFA, Plaintiffs and the New Jersey Class have suffered injury-in-fact and/or
18 actual damage.

19 736. Plaintiffs and the New Jersey Class are entitled to recover legal and/or
20 equitable relief including an order enjoining New GM's unlawful conduct, treble
21 damages, costs and reasonable attorneys' fees pursuant to N.J. STAT. ANN. § 56:8-
22 19, and any other just and appropriate relief.

COUNT XLVIII

FRAUD BY CONCEALMENT

25 737. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.

738. This claim is brought on behalf of Nationwide Class Members who are
New Jersey residents (the “New Jersey Class”).

1 739. New GM concealed and suppressed material facts concerning the
2 quality of its vehicles and the class vehicles.

3 740. New GM concealed and suppressed material facts concerning the
4 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
5 studious avoidance of safety issues, and a shoddy design process.

6 741. New GM concealed and suppressed material facts concerning the many
7 serious defects plaguing class vehicles, and that it valued cost-cutting over safety and
8 took steps to ensure that its employees did not reveal known safety defects to
9 regulators or consumers.

10 742. New GM did so in order to boost confidence in its vehicles and falsely
11 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
12 that New GM was a reputable manufacturer that stands behind its vehicles after they
13 are sold and that its vehicles are safe and reliable. The false representations were
14 material to consumers, both because they concerned the quality and safety of the
15 class vehicles and because the representations played a significant role in the value of
16 the vehicles.

17 743. New GM had a duty to disclose the many defects in the class vehicles
18 because they were known and/or accessible only to New GM, were in fact known to
19 New GM as of the time of its creation in 2009 and at every point thereafter, New GM
20 had superior knowledge and access to the facts, and New GM knew the facts were
21 not known to or reasonably discoverable by Plaintiffs and the New Jersey Class.
22 New GM also had a duty to disclose because it made many general affirmative
23 representations about the safety, quality, and lack of defects in its vehicles, as set
24 forth above, which were misleading, deceptive and incomplete without the disclosure
25 of the additional facts set forth above regarding its actual safety record, safety
26 philosophy, and practices and the actual safety defects in its vehicles. Having
27 volunteered to provide information to Plaintiffs, GM had the duty to disclose not just
28 the partial truth, but the entire truth. These omitted and concealed facts were material

1 because they directly impact the value of the class vehicles purchased or leased by
2 Plaintiffs and the New Jersey Class. Whether a manufacturer's products are safe and
3 reliable, and whether that manufacturer stands behind its products, are material
4 concerns to a consumer.

5 744. New GM actively concealed and/or suppressed these material facts, in
6 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
7 image and cost New GM money, and it did so at the expense of Plaintiffs and the
8 New Jersey Class.

9 745. On information and belief, New GM has still not made full and adequate
10 disclosure and continues to defraud Plaintiffs and the New Jersey Class and conceal
11 material information regarding defects that exist in the class vehicles.

12 746. Plaintiffs and the New Jersey Class were unaware of these omitted
13 material facts and would not have acted as they did if they had known of the
14 concealed and/or suppressed facts, in that they would not have purchased cars
15 manufactured by New GM; and/or they would not have purchased cars manufactured
16 by Old GM in the time after New GM had come into existence and had fraudulently
17 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
18 not have continued to drive their vehicles or would have taken other affirmative
19 steps. Plaintiffs' and the New Jersey Class's actions were justified. New GM was in
20 exclusive control of the material facts and such facts were not known to the public,
21 Plaintiffs, or the New Jersey Class.

22 747. Because of the concealment and/or suppression of the facts, Plaintiffs
23 and the New Jersey Class sustained damage because they own vehicles that
24 diminished in value as a result of New GM's concealment of, and failure to timely
25 disclose, the serious defects in the class vehicles and the serious safety and quality
26 issues engendered by New GM's corporate policies. Had they been aware of the
27 many defects that existed in the class vehicles, Plaintiffs who purchased new or
28 Certified Previously Owned vehicles after New GM came into existence either would

have paid less for their vehicles or would not have purchased or leased them at all; and no Plaintiffs regardless of time of purchase or lease would have maintained their vehicles.

748. The value of all New Jersey Class Members' vehicles has diminished as a result of New GM's fraudulent concealment of the many defects and its systemic safety issues which have greatly tarnished the class vehicles and made any reasonable consumer reluctant to purchase any of the class vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

749. Accordingly, New GM is liable to the New Jersey Class for damages in an amount to be proven at trial.

750. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the New Jersey Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT XLIX

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(N.J. STAT. ANN. § 12A:2-314)

751. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

752. This claim is brought only on behalf of New Jersey Class.

753. New GM was a merchant with respect to motor vehicles within the meaning of N.J. STAT. ANN. § 12A:2-104(1).

754. A warranty that the class vehicles were in merchantable condition was implied by law under N.J. STAT. ANN. § 12A:2-104(1) in the transactions when Plaintiffs purchased their class vehicles from New GM on or after July 11, 2009.

755. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used.

1 Specifically, the class vehicles are inherently defective in that there are defects which
2 cause inordinate and unusual early wear and failure of engines.

3 756. New GM was provided notice of these issues by numerous complaints
4 filed against it, internal investigations, and by numerous individual letters and
5 communications sent by Plaintiffs and the New Jersey Class.

6 757. As a direct and proximate result of New GM's breach of the warranties
7 of merchantability, Plaintiffs and the New Jersey Class members have been damaged
8 in an amount to be proven at trial.

9 **COUNT L**

10 **THIRD-PARTY BENEFICIARY CLAIM**

11 758. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.

13 759. This claim is brought only on behalf of Class members who are New
14 Jersey residents (the "New Jersey Class").

15 760. In the Sales Agreement through which New GM acquired substantially
16 all of the assets of New GM, New GM explicitly agreed as follows:

17 From and after the Closing, [New GM] shall comply with the
18 certification, reporting and recall requirements of the National Traffic
19 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
20 Recall Enhancement, Accountability and Documentation Act, the Clean
21 Air Act, the California Health and Safety Code and similar Laws, in
22 each case, to the extent applicable in respect of vehicles and vehicle
23 parts manufactured or distributed by [Old GM].

24 761. With the exception of the portion of the agreement that purports to
25 immunize New GM from its own independent misconduct with respect to cars and
26 parts made by Old GM, the Sales Agreement is a valid and binding contract.

27 762. But for New GM's covenant to comply with the TREAD Act with
28 respect to cars and parts made by Old GM, the TREAD Act would have no

1 application to New GM with respect to those cars and parts. That is because the
2 TREAD Act on its face imposes reporting and recall obligations only on the
3 “manufacturers” of a vehicle. 49 U.S.C. § 30118(c).

4 763. Because New GM agreed to comply with the TREAD Act with respect
5 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
6 make quarterly submissions to NHTSA of “early warning reporting” data, including
7 incidents involving death, injury, or property damage, warranty claims, consumer
8 complaints, and field reports concerning failure, malfunction, lack of durability or
9 other performance issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b)
10 retain for five years all underlying records on which the early warning reports are
11 based and all records containing information on malfunctions that may be related to
12 motor vehicle safety. See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate
13 remedial action if it knows or should know that a safety defect exists – including
14 notifying NHTSA and consumers and ordering a recall if necessary. See 49 U.S.C. §
15 30118(c); 49 C.F.R. § 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

16 764. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
17 Old GM, are the clear intended beneficiaries of New GM’s agreement to comply
18 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
19 benefit of having a manufacturer responsible for monitoring the safety of their Old
20 GM vehicles and making certain that any known safety defects would be promptly
21 remedied.

22 765. New GM breached its covenant to comply with the TREAD Act with
23 respect to the class vehicles, as it failed to take action to remediate the defect at any
24 time, up to the present.

25 766. Although the Sale Order which consummated New GM’s purchase of
26 Old GM purported to give New GM immunity from claims concerning vehicles or
27 parts made by Old GM, the bankruptcy court recently ruled that provision to be
28 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale

1 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
2 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
3 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
4 breaches of the promise it made in the Sale Agreement.

5 767. Plaintiffs and the Class members were damaged as a result of New
6 GM's breach. Because of New GM's failure to timely remedy the defect in class
7 vehicles, the value of Old GM class vehicles has diminished in an amount to be
8 determined at trial.

9 **COUNT LI**

10 **UNJUST ENRICHMENT**

11 768. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.

13 769. This claim is brought on behalf of members of the New Jersey Class
14 who purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time
15 period after New GM came into existence, and who purchased or leased class
16 vehicles in the time period before New GM came into existence, which cars were
17 still on the road after New GM came into existence (the "New Jersey Unjust
18 Enrichment Class").

19 770. New GM has received and retained a benefit from the Plaintiffs and
20 inequity has resulted.

21 771. New GM has benefitted from selling and leasing defective cars,
22 including Certified Pre-Owned cars, whose value was artificially inflated by New
23 GM's concealment of defect issues that plagued class vehicles, for more than they
24 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
25 pay other costs.

26 772. With respect to the class vehicles purchased before New GM came into
27 existence that were still on the road after New GM came into existence and as to
28 which New GM had unjustly and unlawfully determined not to recall, New GM

1 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
2 from its statements about the success of New GM.

3 773. Thus, all New Jersey Unjust Enrichment Class Members conferred a
4 benefit on New GM.

5 774. It is inequitable for New GM to retain these benefits.

6 775. Plaintiffs were not aware about the true facts about the class vehicles,
7 and did not benefit from GM's conduct.

8 776. New GM knowingly accepted the benefits of its unjust conduct.

9 777. As a result of New GM's conduct, the amount of its unjust enrichment
10 should be disgorged, in an amount according to proof.

11 **Ohio**

12 **COUNT LII**

13 **VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT**

14 **(OHIO REV. CODE ANN. § 1345.01, et seq.)**

15 778. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.

17 779. This claim is brought only on behalf of Nationwide Class Members who
18 are Ohio residents (the "Ohio Class").

19 780. New GM is a "supplier" as that term is defined in OHIO REV. CODE §
20 1345.01(C).

21 781. Plaintiffs and the Ohio Class are "consumers" as that term is defined in
22 OHIO REV. CODE § 1345.01(D), and their purchases and leases of the class
23 vehicles are "consumer transactions" within the meaning of OHIO REV. CODE §
24 1345.01(A).

25 782. The Ohio Consumer Sales Practices Act ("Ohio CSPA"), OHIO REV.
26 CODE § 1345.02, broadly prohibits unfair or deceptive acts or practices in
27 connection with a consumer transaction. Specifically, and without limitation of the
28 broad prohibition, the Act prohibits suppliers from representing (i) that goods have

1 characteristics or uses or benefits which they do not have; (ii) that their goods are of
2 a particular quality or grade they are not; and (iii) the subject of a consumer
3 transaction has been supplied in accordance with a previous representation, if it has
4 not. *Id.* New GM's conduct as alleged above and below constitutes unfair and/or
5 deceptive consumer sales practices in violation of OHIO REV. CODE § 1345.02.

6 783. By systematically devaluing safety and concealing defects in the class
7 vehicles, New GM engaged in deceptive business practices prohibited by the Ohio
8 CSPA, including: representing that class vehicles have characteristics, uses, benefits,
9 and qualities which they do not have; representing that class vehicles are of a
10 particular standard, quality, and grade when they are not; representing that the
11 subject of a transaction involving class vehicles has been supplied in accordance with
12 a previous representation when it has not; and engaging in other unfair or deceptive
13 acts or practices.

14 784. New GM's actions as set forth above occurred in the conduct of trade or
15 commerce.

16 785. In the course of its business, New GM systematically devalued safety
17 and concealed defects in the class vehicles as described herein and otherwise
18 engaged in activities with a tendency or capacity to deceive. New GM also engaged
19 in unlawful trade practices by employing deception, deceptive acts or practices,
20 fraud, misrepresentations, or concealment, suppression or omission of any material
21 fact with intent that others rely upon such concealment, suppression or omission, in
22 connection with the sale of class vehicles.

23 786. From the date of its inception on July 11, 2009, New GM knew of many
24 serious defects affecting many models and years of the class vehicles, because of (i)
25 the knowledge of Old GM personnel who remained at New GM; (ii) continuous
26 reports, investigations, and notifications from regulatory authorities; and (iii)
27 ongoing performance of New GM's TREAD Act obligations. New GM became
28 aware of other serious defects and systemic safety issues years ago, but concealed all

1 of that information.

2 787. New GM was also aware that it valued cost-cutting over safety, selected
3 parts from the cheapest supplier regardless of quality, and actively discouraged
4 employees from finding and flagging known safety defects, and that this approach
5 would necessarily cause the existence of more defects in the vehicles it designed and
6 manufactured and the failure to disclose and remedy defects in all class vehicles.

7 New GM concealed this information as well.

8 788. By failing to disclose and by actively concealing the many defects in the
9 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
10 presenting itself as a reputable manufacturer that valued safety and stood behind its
11 vehicles after they were sold, New GM engaged in unfair and deceptive business
12 practices in violation of the Ohio CSPA.

13 789. In the course of New GM's business, it willfully failed to disclose and
14 actively concealed the dangerous risk posed by the defects discussed above. New
15 GM compounded the deception by repeatedly asserting that the class vehicles were
16 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
17 that valued safety and stood behind its vehicles once they are on the road.

18 790. New GM's unfair or deceptive acts or practices were likely to and did in
19 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
20 reliability of class vehicles, the quality of the GM brand, the devaluing of safety at
21 New GM, and the true value of the class vehicles.

22 791. New GM intentionally and knowingly misrepresented material facts
23 regarding the class vehicles with an intent to mislead Plaintiffs and the Ohio Class.

24 792. New GM knew or should have known that its conduct violated the Ohio
25 CSPA.

26 793. As alleged above, New GM made material statements about the safety
27 and reliability of the class vehicles and the GM brand that were either false or
28 misleading.

1 794. New GM owed Plaintiffs a duty to disclose the true safety and reliability
2 of the class vehicles and the devaluing of safety at New GM, because New GM:

3 (a) Possessed exclusive knowledge that it valued cost-cutting over
4 safety, selected parts from the cheapest supplier regardless of quality, and actively
5 discouraged employees from finding and flagging known safety defects, and that this
6 approach would necessarily cause the existence of more defects in the vehicles it
7 designed and manufactured;

8 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

9 (c) Made incomplete representations about the safety and reliability
10 of the class vehicles generally, and the valve guide defects in particular, while
11 purposefully withholding material facts from Plaintiffs that contradicted these
12 representations.

13 795. Because New GM fraudulently concealed the many defects in the class
14 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
15 attached to those vehicles by New GM's conduct, they are now worth significantly
16 less than they otherwise would be.

17 796. New GM's systemic devaluation of safety and its concealment of
18 defects in the class vehicles were material to Plaintiffs and the Ohio Class. A vehicle
19 made by a reputable manufacturer of vehicles is worth more than an otherwise
20 comparable vehicle made by a disreputable manufacturer of vehicles that conceals
21 defects rather than promptly remedies them.

22 797. Plaintiffs and the Ohio Class suffered ascertainable loss caused by New
23 GM's misrepresentations and its concealment of and failure to disclose material
24 information. Plaintiffs who purchased class vehicles after the date of New GM's
25 inception either would have paid less for their vehicles or would not have purchased
26 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
27 of New GM's misconduct.

28 798. Regardless of time of purchase or lease, no Plaintiffs would have

1 maintained and continued to drive their vehicles had they been aware of New GM's
2 misconduct. By contractually assuming TREAD Act responsibilities with respect to
3 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
4 those vehicles because the TREAD Act on its face only applies to vehicle
5 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
6 vehicle owners to refrain from unfair and deceptive acts or practices under the Ohio
7 CSPA. And, in any event, all class vehicle owners suffered ascertainable loss in the
8 form of the diminished value of their vehicles as a result of New GM's deceptive and
9 unfair acts and practices that occurred in the course of New GM's business.

10 799. As a direct and proximate result of New GM's violations of the Ohio
11 CSPA, Plaintiffs and the Ohio Class have suffered injury-in-fact and/or actual
12 damage.

13 800. Ohio Class Members seek punitive damages against New GM because
14 New GM's conduct was egregious. New GM misrepresented the safety and
15 reliability of class vehicles, concealed myriad defects in the class vehicles and the
16 systemic safety issues plaguing New GM, deceived Class Members on life-or-death
17 matters, and concealed material facts that only New GM knew, all to avoid the
18 expense and public relations nightmare of correcting the serious flaw in its culture
19 and in the class vehicles. New GM's egregious conduct warrants punitive damages.

20 801. Plaintiffs and the Ohio Class specifically do not allege herein a claim for
21 violation of OHIO REV. CODE § 1345.72.

22 802. New GM was on notice pursuant to OHIO REV. CODE § 1345.09(B)
23 that its actions constituted unfair, deceptive, and unconscionable practices by, for
24 example, *Mason v. Mercedes-Benz USA, LLC*, 2005 Ohio App. LEXIS 3911, at *33
25 (S.D. Ohio Aug. 18, 2005), and *Lilly v. Hewlett-Packard Co.*, 2006 U.S. Dist. LEXIS
26 22114, at *17-18 (S.D. Ohio Apr. 21, 2006). Further, New GM's conduct as alleged
27 above constitutes an act or practice previously declared to be deceptive or
28 unconscionable by rule adopted under division (B)(2) of section 1345.05 and

1 previously determined by Ohio courts to violate Ohio's Consumer Sales Practices
2 Act and was committed after the decisions containing these determinations were
3 made available for public inspection under division (A)(3) of O.R.C. § 1345.05. The
4 applicable rule and Ohio court opinions include, but are not limited to: OAC 109:4-
5 3-16; *Mason v. Mercedes-Benz USA, LLC*, 2005 Ohio 4296 (Ohio Ct. App. 2005);
6 *Khoury v. Lewis*, Cuyahoga Common Pleas No. 342098 (2001); State ex rel.
7 *Montgomery v. Canterbury*, Franklin App. No. 98CVH054085 (2000); and
8 *Fribourg v. Vandemark* (July 26, 1999), Clermont App. No CA99-02-017,
9 unreported (PIF # 10001874).

10 803. As a result of the foregoing wrongful conduct of New GM, Plaintiffs
11 and the Ohio Class have been damaged in an amount to be proven at trial, and seek
12 all just and proper remedies, including, but not limited to, actual and statutory
13 damages, an order enjoining New GM's deceptive and unfair conduct, treble
14 damages, court costs and reasonable attorneys' fees, pursuant to OHIO REV. CODE
15 § 1345.09, et seq.

COUNT LIII

FRAUD BY CONCEALMENT

18 804. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.

20 805. This claim is brought on behalf of Nationwide Class Members who are
21 Ohio residents (the “Ohio Class”).

22 806. New GM concealed and suppressed material facts concerning the
23 quality of the class vehicles.

24 807. New GM concealed and suppressed material facts concerning the
25 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
26 studious avoidance of quality issues, and a shoddy design process.

27 808. New GM concealed and suppressed material facts concerning the
28 defects in the class vehicles, and that it valued cost-cutting over quality and took

1 steps to ensure that its employees did not reveal known defects to regulators or
2 consumers.

3 809. New GM did so in order to boost confidence in its vehicles and falsely
4 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
5 that New GM was a reputable manufacturer that stands behind its vehicles after they
6 are sold and that its vehicles are safe and reliable. The false representations were
7 material to consumers, both because they concerned the quality and safety of the
8 class vehicles and because the representations played a significant role in the value of
9 the vehicles.

10 810. New GM had a duty to disclose the defects in the class vehicles because
11 they were known and/or accessible only to New GM, were in fact known to New
12 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
13 superior knowledge and access to the facts, and New GM knew the facts were not
14 known to or reasonably discoverable by Plaintiffs and the Ohio Class. New GM also
15 had a duty to disclose because it made many general affirmative representations
16 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
17 were misleading, deceptive and incomplete without the disclosure of the additional
18 facts set forth above regarding defects in the class vehicles. Having volunteered to
19 provide information to Plaintiffs, GM had the duty to disclose not just the partial
20 truth, but the entire truth. These omitted and concealed facts were material because
21 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
22 and the Ohio Class.

23 811. New GM actively concealed and/or suppressed these material facts, in
24 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
25 image and cost New GM money, and it did so at the expense of Plaintiffs and the
26 Ohio Class.

27 812. On information and belief, New GM has still not made full and adequate
28 disclosure and continues to defraud Plaintiffs and the Ohio Class and conceal

1 material information regarding defects that exist in the class vehicles.

2 813. Plaintiffs and the Ohio Class were unaware of these omitted material
3 facts and would not have acted as they did if they had known of the concealed and/or
4 suppressed facts, in that they would not have purchased cars manufactured by New
5 GM; and/or they would not have purchased cars manufactured by Old GM in the
6 time after New GM had come into existence and had fraudulently opted to conceal,
7 and to misrepresent, the true facts about the vehicles; and/or would not have
8 continued to drive their vehicles or would have taken other affirmative steps.
9 Plaintiffs' and the Ohio Class's actions were justified. New GM was in exclusive
10 control of the material facts and such facts were not known to the public, Plaintiffs,
11 or the Ohio Class.

12 814. Because of the concealment and/or suppression of the facts, Plaintiffs
13 and the Ohio Class sustained damage because they own vehicles that diminished in
14 value as a result of New GM's concealment of, and failure to timely disclose, the
15 defects in the class vehicles and the quality issues engendered by New GM's
16 corporate policies. Had they been aware of the defects that existed in the class
17 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
18 New GM came into existence either would have paid less for their vehicles or would
19 not have purchased or leased them at all; and no Plaintiffs regardless of time of
20 purchase or lease would have maintained their vehicles.

21 815. The value of all Ohio Class Members' vehicles has diminished as a
22 result of New GM's fraudulent concealment of the many defects which have
23 tarnished the Corvette brand and made any reasonable consumer reluctant to
24 purchase any of the class vehicles, let alone pay what otherwise would have been fair
25 market value for the vehicles.

26 816. Accordingly, New GM is liable to the Ohio Class for damages in an
27 amount to be proven at trial.

28 817. New GM's acts were done maliciously, oppressively, deliberately, with

1 intent to defraud, and in reckless disregard of Plaintiffs' and the Ohio Class's rights
2 and well-being to enrich New GM. New GM's conduct warrants an assessment of
3 punitive damages in an amount sufficient to deter such conduct in the future, which
4 amount is to be determined according to proof.

5 **COUNT LIV**

6 **IMPLIED WARRANTY IN TORT**

7 818. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 819. Plaintiffs bring this claim only on behalf of the Ohio Class members.

10 820. The class vehicles sold or leased by New GM on or after July 11, 2009
11 contained a design defect, namely, a defective engine subject to premature wear and
12 catastrophic failure.

13 821. The design, manufacturing, and/or assembly defects existed at the time
14 the class vehicles containing the defective engine left the possession or control of
15 New GM.

16 822. Based upon the dangerous product defects, New GM failed to meet the
17 expectations of a reasonable consumer. The class vehicles failed their ordinary,
18 intended use because the engine is subject to premature unusual wear and
19 catastrophic failure.

20 823. The design defects in the vehicles were the direct and proximate cause
21 of economic damages to Plaintiffs, as well as damages incurred or to be incurred by
22 each of the Ohio Class members.

23 **COUNT LV**

24 **THIRD-PARTY BENEFICIARY CLAIM**

25 824. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.

27 825. This claim is brought only on behalf of Class members who are Ohio
28 residents (the "Ohio Class").

1 826. In the Sales Agreement through which New GM acquired substantially
2 all of the assets of New GM, New GM explicitly agreed as follows:

3 From and after the Closing, [New GM] shall comply with the
4 certification, reporting and recall requirements of the National Traffic
5 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
6 Recall Enhancement, Accountability and Documentation Act, the Clean
7 Air Act, the California Health and Safety Code and similar Laws, in
8 each case, to the extent applicable in respect of vehicles and vehicle
9 parts manufactured or distributed by [Old GM].

10 827. With the exception of the portion of the agreement that purports to
11 immunize New GM from its own independent misconduct with respect to cars and
12 parts made by Old GM, the Sales Agreement is a valid and binding contract.

13 828. But for New GM's covenant to comply with the TREAD Act with
14 respect to cars and parts made by Old GM, the TREAD Act would have no
15 application to New GM with respect to those cars and parts. That is because the
16 TREAD Act on its face imposes reporting and recall obligations only on the
17 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

18 829. Because New GM agreed to comply with the TREAD Act with respect
19 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a) make quarterly submissions to NHTSA of "early warning reporting" data, including incidents involving property damage, warranty claims, consumer complaints, and field reports concerning failure, malfunction, lack of durability or other performance issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all underlying records on which the early warning reports are based and all records containing information on malfunctions that may be related to motor vehicle safety. See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows or should know that a safety defect exists – including notifying NHTSA and consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §

¹ 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

2 830. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
3 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
4 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
5 benefit of having a manufacturer responsible for monitoring the safety of their Old
6 GM vehicles and making certain that any known defects would be promptly
7 remedied.

8 831. Although the Sale Order which consummated New GM's purchase of
9 Old GM purported to give New GM immunity from claims concerning vehicles or
10 parts made by Old GM, the bankruptcy court recently ruled that provision to be
11 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
12 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
13 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
14 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
15 breaches of the promise it made in the Sale Agreement.

16 832. New GM breached its covenant to comply with the TREAD Act with
17 respect to the class vehicles, as it failed to take action to remediate the defects at any
18 time, up to the present.

19 833. Plaintiffs and the Ohio Class were damaged as a result of New GM's
20 breach. Because of New GM's failure to timely remedy the defect in the class
21 vehicles, the value of Old GM class vehicles has diminished in an amount to be
22 determined at trial.

COUNT LVI

UNJUST ENRICHMENT

25 834. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.

27 835. This claim is brought on behalf of members of the Ohio Class who
28 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period

1 after New GM came into existence, and who purchased or leased class vehicles in the
2 time period before New GM came into existence, which cars were still on the road
3 after New GM came into existence (the “Ohio Unjust Enrichment Class”).

4 836. New GM has received and retained a benefit from the Plaintiffs and
5 inequity has resulted.

6 837. New GM has benefitted from selling and leasing defective cars,
7 including Certified Pre-Owned cars, whose value was artificially inflated by New
8 GM’s concealment of defect issues that plagued class vehicles for more than they
9 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
10 pay other costs.

11 838. With respect to the class vehicles purchased before New GM came into
12 existence that were still on the road after New GM came into existence and as to
13 which New GM had unjustly and unlawfully determined not to recall, New GM
14 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
15 from its statements about the success of New GM.

16 839. Thus, all Ohio Unjust Enrichment Class Members conferred a benefit on
17 New GM.

18 840. It is inequitable for New GM to retain these benefits.

19 841. Plaintiffs were not aware about the true facts about class vehicles, and
20 did not benefit from GM’s conduct.

21 842. New GM knowingly accepted the benefits of its unjust conduct.
22 As a result of New GM’s conduct, the amount of its unjust enrichment should be
23 disgorged, in an amount according to proof.

24 ////

25 ////

26 ////

27 ////

28 ////

KNAPP,
PETERSEN
& CLARKE

1 **Pennsylvania**

2 **COUNT LVII**

3 **VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES**

4 **AND CONSUMER PROTECTION LAW**

5 **(73 P.S. § 201-1, et seq.)**

6 843. Plaintiffs reallege and incorporate by reference all paragraphs as though
7 fully set forth herein.

8 844. This claim is brought only on behalf of Nationwide Class Members who
9 are Pennsylvania residents (the “Pennsylvania Class”).

10 845. Plaintiffs purchased or leased their class vehicles primarily for personal,
11 family or household purposes within the meaning of 73 P.S. § 201-9.2.

12 846. All of the acts complained of herein were perpetrated by New GM in the
13 course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

14 847. The Pennsylvania Unfair Trade Practices and Consumer Protection Law
15 (“Pennsylvania CPL”) prohibits unfair or deceptive acts or practices, including:

16 (i) “Representing that goods or services have ... characteristics, Benefits or
17 qualities that they do not have;” (ii) “Representing that goods or services are of a
18 particular standard, quality or grade ... if they are of another;:” (iii) “Advertising
19 goods or services with intent not to sell them as advertised;” and (iv) “Engaging in
20 any other fraudulent or deceptive conduct which creates a likelihood of confusion or
21 misunderstanding.” 73 P.S. § 201-2(4).

22 848. New GM engaged in unlawful trade practices, including representing
23 that class vehicles have characteristics, uses, benefits, and qualities which they do not
24 have; representing that class vehicles are of a particular standard and quality when
25 they are not; advertising class vehicles with the intent not to sell them as advertised;
26 and engaging in any other fraudulent or deceptive conduct which creates a likelihood
27 of confusion or of misunderstanding.

28 849. In the course of its business, New GM systematically devalued safety

1 and concealed defects in the class vehicles as described herein and otherwise
2 engaged in activities with a tendency or capacity to deceive. New GM also engaged
3 in unlawful trade practices by employing deception, deceptive acts or practices,
4 fraud, misrepresentations, or concealment, suppression or omission of any material
5 fact with intent that others rely upon such concealment, suppression or omission, in
6 connection with the sale of class vehicles.

7 850. From the date of its inception on July 11, 2009, New GM knew of many
8 serious defects affecting many models and years of class vehicles, because of (i) the
9 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,
10 investigations, and notifications from regulatory authorities; and (iii) ongoing
11 performance of New GM's TREAD Act obligations. New GM became aware of
12 other serious defects and systemic safety issues years ago, but concealed all of that
13 information.

14 851. New GM was also aware that it valued cost-cutting over safety, selected
15 parts from the cheapest supplier regardless of quality, and actively discouraged
16 employees from finding and flagging known safety defects, and that this approach
17 would necessarily cause the existence of more defects in the vehicles it designed and
18 manufactured and the failure to disclose and remedy defects in all class vehicles.
19 New GM concealed this information as well.

20 852. By failing to disclose and by actively concealing the many defects in the
21 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
22 presenting itself as a reputable manufacturer that valued safety and stood behind its
23 vehicles after they were sold, New GM engaged in unfair and deceptive business
24 practices in violation of the Pennsylvania CPL.

25 853. In the course of New GM's business, it willfully failed to disclose and
26 actively concealed the dangerous risk posed by the defects discussed above. New
27 GM compounded the deception by repeatedly asserting that the class vehicles were
28 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer

1 that valued safety and stood behind its vehicles once they are on the road.

2 854. New GM's unfair or deceptive acts or practices were likely to and did in
3 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
4 reliability of the class vehicles, the quality of the GM brand, the devaluing of safety
5 at New GM, and the true value of the class vehicles.

6 855. New GM intentionally and knowingly misrepresented material facts
7 regarding the class vehicles with an intent to mislead Plaintiffs and the Pennsylvania
8 Class.

9 856. New GM knew or should have known that its conduct violated the
10 Pennsylvania CPL.

11 857. As alleged above, New GM made material statements about the safety
12 and reliability of the class vehicles and the GM brand that were either false or
13 misleading.

14 858. New GM owed Plaintiffs a duty to disclose the true safety and reliability
15 of the class vehicles and the devaluing of safety at New GM, because New GM:

16 (a) Possessed exclusive knowledge that it valued cost-cutting over
17 safety, selected parts from the cheapest supplier regardless of quality, and actively
18 discouraged employees from finding and flagging known safety defects, and that this
19 approach would necessarily cause the existence of more defects in the vehicles it
20 designed and manufactured;

21 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

22 (c) Made incomplete representations about the safety and reliability
23 of the class vehicles generally, and the valve guide defects in particular, while
24 purposefully withholding material facts from Plaintiffs that contradicted these
25 representations.

26 859. Because New GM fraudulently concealed the defects in the class
27 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
28 attached to those vehicles by New GM's conduct, they are now worth significantly

1 less than they otherwise would be.

2 860. New GM's systemic devaluation of safety and its concealment of the
3 defects in the class vehicles were material to Plaintiffs and the Pennsylvania Class.
4 A vehicle made by a reputable manufacturer of vehicles is worth more than an
5 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
6 conceals defects rather than promptly remedies them.

7 861. Plaintiffs and the Pennsylvania Class suffered ascertainable loss caused
8 by New GM's misrepresentations and its concealment of and failure to disclose
9 material information. Plaintiffs who purchased class vehicles after the date of New
10 GM's inception either would have paid less for their vehicles or would not have
11 purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain
12 as a result of New GM's misconduct.

13 862. Regardless of time of purchase or lease, no Plaintiffs would have
14 maintained and continued to drive their vehicles had they been aware of New GM's
15 misconduct. By contractually assuming TREAD Act responsibilities with respect to
16 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
17 those vehicles because the TREAD Act on its face only applies to vehicle
18 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
19 vehicle owners to refrain from unfair and deceptive acts or practices under the
20 Pennsylvania CPL. And, in any event, all class vehicle owners suffered ascertainable
21 loss in the form of the diminished value of their vehicles as a result of New GM's
22 deceptive and unfair acts and practices that occurred in the course of New GM's
23 business.

24 863. As a direct and proximate result of New GM's violations of the
25 Pennsylvania CPL, Plaintiffs and the Pennsylvania Class have suffered injury-in-fact
26 and/or actual damage.

27 864. New GM is liable to Plaintiffs and the Pennsylvania Class for treble
28 their actual damages or \$100, whichever is greater, and attorneys' fees and costs. 73

1 P.S. § 201-9.2(a). Plaintiffs and the Pennsylvania Class are also entitled to an award
2 of punitive damages given that New GM's conduct was malicious, wanton, willful,
3 oppressive, or exhibited a reckless indifference to the rights of others.

4 **COUNT LVIII**

5 **FRAUD BY CONCEALMENT**

6 865. Plaintiffs reallege and incorporate by reference all paragraphs as though
7 fully set forth herein.

8 866. This claim is brought on behalf of Nationwide Class Members who are
9 Pennsylvania residents (the "Pennsylvania Class").

10 867. New GM concealed and suppressed material facts concerning the
11 quality of the class vehicles.

12 868. New GM concealed and suppressed material facts concerning the
13 culture of New GM - a culture characterized by an emphasis on cost-cutting, the
14 studious avoidance of quality issues, and a shoddy design process.

15 869. New GM concealed and suppressed material facts concerning the
16 defects in the class vehicles, and that it valued cost-cutting over quality and took
17 steps to ensure that its employees did not reveal known defects to regulators or
18 consumers.

19 870. New GM did so in order to boost confidence in its vehicles and falsely
20 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
21 that New GM was a reputable manufacturer that stands behind its vehicles after they
22 are sold and that its vehicles are safe and reliable. The false representations were
23 material to consumers, both because they concerned the quality and safety of the
24 class vehicles and because the representations played a significant role in the value of
25 the vehicles.

26 871. New GM had a duty to disclose the defects in the class vehicles because
27 they were known and/or accessible only to New GM, were in fact known to New
28 GM as of the time of its creation in 2009 and at every point thereafter, New GM had

1 superior knowledge and access to the facts, and New GM knew the facts were not
2 known to or reasonably discoverable by Plaintiffs and the Pennsylvania Class. New
3 GM also had a duty to disclose because it made many general affirmative
4 representations about the safety, quality, and lack of defects in its vehicles, as set
5 forth above, which were misleading, deceptive and incomplete without the disclosure
6 of the additional facts set forth above regarding defects in the class vehicles. Having
7 volunteered to provide information to Plaintiffs, GM had the duty to disclose not just
8 the partial truth, but the entire truth. These omitted and concealed facts were material
9 because they directly impact the value of the class vehicles purchased or leased by
10 Plaintiffs and the Pennsylvania Class.

11 872. New GM actively concealed and/or suppressed these material facts, in
12 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
13 image and cost New GM money, and it did so at the expense of Plaintiffs and the
14 Pennsylvania Class.

15 873. On information and belief, New GM has still not made full and adequate
16 disclosure and continues to defraud Plaintiffs and the Pennsylvania Class and conceal
17 material information regarding defects that exist in the class vehicles.

18 874. Plaintiffs and the Pennsylvania Class were unaware of these omitted
19 material facts and would not have acted as they did if they had known of the
20 concealed and/or suppressed facts, in that they would not have purchased cars
21 manufactured by New GM; and/or they would not have purchased cars manufactured
22 by Old GM in the time after New GM had come into existence and had fraudulently
23 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
24 not have continued to drive their vehicles or would have taken other affirmative
25 steps. Plaintiffs' and the Pennsylvania Class's actions were justified. New GM was
26 in exclusive control of the material facts and such facts were not known to the public,
27 Plaintiffs, or the Pennsylvania Class.

28 875. Because of the concealment and/or suppression of the facts, Plaintiffs

1 and the Pennsylvania Class sustained damage because they own vehicles that
2 diminished in value as a result of New GM's concealment of, and failure to timely
3 disclose, the defects in the class vehicles and the quality issues engendered by New
4 GM's corporate policies. Had they been aware of the defects that existed in the class
5 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
6 New GM came into existence either would have paid less for their vehicles or would
7 not have purchased or leased them at all; and no Plaintiffs regardless of time of
8 purchase or lease would have maintained their vehicles.

9 876. The value of all Pennsylvania Class Members' vehicles has diminished
10 as a result of New GM's fraudulent concealment of the defects which have tarnished
11 the Corvette brand and made any reasonable consumer reluctant to purchase any of
12 the class vehicles, let alone pay what otherwise would have been fair market value
13 for the vehicles.

14 877. Accordingly, New GM is liable to the Pennsylvania Class for damages
15 in an amount to be proven at trial.

16 878. New GM's acts were done maliciously, oppressively, deliberately, with
17 intent to defraud, and in reckless disregard of Plaintiffs' and the Pennsylvania Class's
18 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
19 of punitive damages in an amount sufficient to deter such conduct in the future,
20 which amount is to be determined according to proof.

COUNT LIX

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(13 PA. CONS. STAT. ANN. § 2314)

24 879. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.

26 || 880. This claim is brought only on behalf of the Pennsylvania Class.

27 881. New GM is s a merchant with respect to motor vehicles.

28 882. A warranty that the class vehicles were in merchantable condition was

1 implied by law when New GM sold or leased the class vehicles to Plaintiffs and the
2 Pennsylvania Class on or after July 11, 2009.

3 883. These vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are
5 used. Specifically, the class vehicles are inherently defective in that there are defects
6 in the engine which result in premature unusual wear and catastrophic failure.

7 884. New GM was provided notice of these issues by numerous complaints
8 filed against it, by its own internal investigations, and by numerous individual letters
9 and communications sent by Plaintiffs and the Pennsylvania Class before or within a
10 reasonable amount of time after New GM issued the recall and the allegations of
11 vehicle defects became public.

12 885. As a direct and proximate result of New GM's breach of the warranties
13 of merchantability, Plaintiffs and the Pennsylvania Class members have been
14 damaged in an amount to be proven at trial.

COUNT LX

THIRD-PARTY BENEFICIARY CLAIM

17 886. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.

19 887. This claim is brought only on behalf of Class members who are
20 Pennsylvania residents (the “Pennsylvania Class”).

21 888. In the Sales Agreement through which New GM acquired substantially
22 all of the assets of New GM, New GM explicitly agreed as follows:

From and after the Closing, [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle

1 parts manufactured or distributed by [Old GM].

2 889. With the exception of the portion of the agreement that purports to
3 immunize New GM from its own independent misconduct with respect to cars and
4 parts made by Old GM, the Sales Agreement is a valid and binding contract.

5 890. But for New GM's covenant to comply with the TREAD Act with
6 respect to cars and parts made by Old GM, the TREAD Act would have no
7 application to New GM with respect to those cars and parts. That is because the
8 TREAD Act on its face imposes reporting and recall obligations only on the
9 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

10 891. Because New GM agreed to comply with the TREAD Act with respect
11 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
12 make quarterly submissions to NHTSA of "early warning reporting" data, including
13 incidents involving property damage, warranty claims, consumer complaints, and
14 field reports concerning failure, malfunction, lack of durability or other performance
15 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
16 underlying records on which the early warning reports are based and all records
17 containing information on malfunctions that may be related to motor vehicle safety.
18 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
19 or should know that a safety defect exists - including notifying NHTSA and
20 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
21 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

22 892. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
23 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
24 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
25 benefit of having a manufacturer responsible for monitoring the safety of their Old
26 GM vehicles and making certain that any known defects would be promptly
27 remedied.

28 893. Although the Sale Order which consummated New GM's purchase of

1 Old GM purported to give New GM immunity from claims concerning vehicles or
2 parts made by Old GM, the bankruptcy court recently ruled that provision to be
3 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
4 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
5 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
6 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
7 breaches of the promise it made in the Sale Agreement.

8 894. New GM breached its covenant to comply with the TREAD Act with
9 respect to the class vehicles, as it failed to take action to remediate the defects at any
10 time, up to the present.

11 895. Plaintiffs and the Pennsylvania Class were damaged as a result of New
12 GM's breach. Because of New GM's failure to timely remedy the defect in class
13 vehicles, the value of Old GM class vehicles has diminished in an amount to be
14 determined at trial.

15 **COUNT LXI**

16 **UNJUST ENRICHMENT**

17 896. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.

19 897. This claim is brought on behalf of members of the Pennsylvania Class
20 who purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time
21 period after New GM came into existence, and who purchased or leased class
22 vehicles in the time period before New GM came into existence, which cars were
23 still on the road after New GM came into existence (the "Pennsylvania Unjust
24 Enrichment Class").

25 898. New GM has received and retained a benefit from the Plaintiffs and
26 inequity has resulted.

27 899. New GM has benefitted from selling and leasing defective cars,
28 including Certified Pre-Owned cars, whose value was artificially inflated by New

1 GM's concealment of defect issues that plagued class vehicles, for more than they
2 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
3 pay other costs.

4 900. With respect to the class vehicles purchased before New GM came into
5 existence that were still on the road after New GM came into existence and as to
6 which New GM had unjustly and unlawfully determined not to recall, New GM
7 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
8 from its statements about the success of New GM.

9 901. Thus, all Pennsylvania Unjust Enrichment Class Members conferred a
10 benefit on New GM.

11 902. It is inequitable for New GM to retain these benefits.

12 903. Plaintiffs were not aware about the true facts about class vehicles, and
13 did not benefit from GM's conduct.

14 904. New GM knowingly accepted the benefits of its unjust conduct.

15 905. As a result of New GM's conduct, the amount of its unjust enrichment
16 should be disgorged, in an amount according to proof.

17 **South Dakota**

18 **COUNT LXII**

19 **VIOLATION OF THE SOUTH DAKOTA**

20 **DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION LAW**

21 **(S.D. CODIFIED LAWS § 37-24-6)**

22 906. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 907. This claim is brought only on behalf of Nationwide Class Members who
25 are South Dakota residents (the "South Dakota Class").

26 908. The South Dakota Deceptive Trade Practices and Consumer Protection
27 Law ("South Dakota CPL") prohibits deceptive acts or practices, which are defined
28 for relevant purposes to include "[k]nowingly and intentionally act, use, or employ

1 any deceptive act or practice, fraud, false pretense, false promises, or
2 misrepresentation or to conceal, suppress, or omit any material fact in connection
3 with the sale or advertisement of any merchandise, regardless of whether any person
4 has in fact been misled, deceived, or damaged thereby [1" S.D. CODIFIED LAWS §
5 37-24-6(1). The conduct of New GM as set forth herein constitutes deceptive acts or
6 practices, fraud, false promises, misrepresentation, concealment, suppression and
7 omission of material facts in violation of S.D. Codified Laws § 37-24-6 and 37-24-
8 31, including, but not limited to, New GM's misrepresentations and omissions
9 regarding the safety and reliability of the class vehicles, and New GM's
10 misrepresentations concerning a host of other defects and safety issues.

11 909. New GM's actions as set forth above occurred in the conduct of trade or
12 commerce.

13 910. In the course of its business, New GM systematically devalued safety
14 and concealed defects in the class vehicles as described herein and otherwise
15 engaged in activities with a tendency or capacity to deceive. New GM also engaged
16 in unlawful trade practices by employing deception, deceptive acts or practices,
17 fraud, misrepresentations, or concealment, suppression or omission of any material
18 fact with intent that others rely upon such concealment, suppression or omission, in
19 connection with the sale of the class vehicles.

20 911. From the date of its inception on July 11, 2009, New GM knew of many
21 defects affecting many models and years of the class vehicles, because of (i) the
22 knowledge of Old GM personnel who remained at New GM; (ii) continuous reports,
23 investigations, and notifications from regulatory authorities; and (iii) ongoing
24 performance of New GM's TREAD Act obligations. New GM became aware of
25 other serious defects and systemic safety issues years ago, but concealed all of that
26 information.

27 912. New GM was also aware that it valued cost-cutting over safety, selected
28 parts from the cheapest supplier regardless of quality, and actively discouraged

1 employees from finding and flagging known safety defects, and that this approach
2 would necessarily cause the existence of more defects in the vehicles it designed and
3 manufactured and the failure to disclose and remedy defects in all class vehicles.

4 New GM concealed this information as well.

5 913. By failing to disclose and by actively concealing the many defects in the
6 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
7 presenting itself as a reputable manufacturer that valued safety and stood behind its
8 vehicles after they were sold, New GM engaged in unfair and deceptive business
9 practices in violation of the South Dakota CPL.

10 914. In the course of New GM's business, it willfully failed to disclose and
11 actively concealed the dangerous risk posed by the many defects. New GM
12 compounded the deception by repeatedly asserting that class vehicles were safe,
13 reliable, and of high quality, and by claiming to be a reputable manufacturer that
14 valued safety and stood behind its vehicles once they are on the road.

15 915. New GM's unfair or deceptive acts or practices were likely to and did in
16 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
17 reliability of the class vehicles, the quality of the New GM brand, the devaluing of
18 safety at New GM, and the true value of the class vehicles.

19 916. New GM intentionally and knowingly misrepresented material facts
20 regarding the class vehicles with an intent to mislead Plaintiffs and the South Dakota
21 Class.

22 917. New GM knew or should have known that its conduct violated the
23 South Dakota CPL.

24 918. As alleged above, New GM made material statements about the safety
25 and reliability of the class vehicles and the GM brand that were either false or
26 misleading.

27 919. New GM owed Plaintiffs a duty to disclose the true safety and reliability
28 of the class vehicles and the devaluing of safety at New GM, because New GM:

1 (a) Possessed exclusive knowledge that it valued cost-cutting over
2 safety, selected parts from the cheapest supplier regardless of quality, and actively
3 discouraged employees from finding and flagging known safety defects, and that this
4 approach would necessarily cause the existence of more defects in the vehicles it
5 designed and manufactured;

6 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

7 (c) Made incomplete representations about the safety and reliability
8 of the class vehicles generally, and the valve guide defects in particular, while
9 purposefully withholding material facts from Plaintiffs that contradicted these
10 representations.

11 920. Because New GM fraudulently concealed the many defects in the class
12 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
13 attached to those vehicles by New GM's conduct, they are now worth significantly
14 less than they otherwise would be.

15 921. New GM's systemic devaluation of safety and its concealment of the
16 defects in the class vehicles were material to Plaintiffs and the South Dakota Class.
17 A vehicle made by a reputable manufacturer of vehicles is worth more than an
18 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
19 conceals defects rather than promptly remedying them.

20 922. Plaintiffs and the South Dakota Class suffered ascertainable loss caused
21 by New GM's misrepresentations and its concealment of and failure to disclose
22 material information. Plaintiffs who purchased class vehicles after the date of New
23 GM's inception either would have paid less for their vehicles or would not have
24 purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain
25 as a result of New GM's conduct.

26 923. Regardless of time of purchase or lease, no Plaintiffs would have
27 maintained and continued to drive their vehicles had they been aware of New GM's
28 misconduct. By contractually assuming TREAD Act responsibilities with respect to

1 Old GM vehicles, New GM effectively assumed the role of manufacturer of those
2 vehicles because the TREAD Act on its face only applies to vehicle manufacturers.
3 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM vehicle owners to
4 refrain from unfair and deceptive acts or practices under the South Dakota CPL.
5 And, in any event, all class vehicle owners suffered ascertainable loss in the form of
6 the diminished value of their vehicles as a result of New GM's deceptive and unfair
7 acts and practices made in the course of New GM's business.

8 924. New GM's violations present a continuing risk to Plaintiffs as well as to
9 the general public. New GM's unlawful acts and practices complained of herein
10 affect the public interest.

11 925. As a direct and proximate result of New GM's violations of the South
12 Dakota CPL, Plaintiffs and the South Dakota Class have suffered injury-in-fact
13 and/or actual damage.

14 926. Under S.D. CODIFIED LAWS § 37-24-31, Plaintiffs and the South
15 Dakota Class are entitled to a recovery of their actual damages suffered as a result of
16 New GM's acts and practices.

17 **COUNT LXIII**

18 **FRAUD BY CONCEALMENT**

19 927. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21 928. This claim is brought on behalf of Nationwide Class Members who are
22 South Dakota residents (the "South Dakota Class").

23 929. New GM concealed and suppressed material facts concerning the
24 quality of its vehicles and the GM brand.

25 930. New GM concealed and suppressed material facts concerning the
26 culture of New GM — a culture characterized by an emphasis on cost-cutting, the
27 studious avoidance of safety issues, and a shoddy design process.

28 931. New GM concealed and suppressed material facts concerning the many

1 serious defects plaguing the class vehicles, and that it valued cost-cutting over safety
2 and took steps to ensure that its employees did not reveal known safety defects to
3 regulators or consumers.

4 932. New GM did so in order to boost confidence in its vehicles and falsely
5 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
6 that New GM was a reputable manufacturer that stands behind its vehicles after they
7 are sold and that its vehicles are safe and reliable. The false representations were
8 material to consumers, both because they concerned the quality and safety of the
9 class vehicles and because the representations played a significant role in the value of
10 the vehicles.

11 933. New GM had a duty to disclose the many defects in the class vehicles
12 because they were known and/or accessible only to New GM, were in fact known to
13 New GM as of the time of its creation in 2009 and at every point thereafter, New GM
14 had superior knowledge and access to the facts, and New GM knew the facts were
15 not known to or reasonably discoverable by Plaintiffs and the South Dakota Class.
16 New GM also had a duty to disclose because it made many general affirmative
17 representations about the safety, quality, and lack of defects in its vehicles, as set
18 forth above, which were misleading, deceptive and incomplete without the disclosure
19 of the additional facts set forth above regarding defects in the class vehicles. Having
20 volunteered to provide information to Plaintiffs, GM had the duty to disclose not just
21 the partial truth, but the entire truth. These omitted and concealed facts were material
22 because they directly impact the value of the class vehicles purchased or leased by
23 Plaintiffs and the South Dakota Class. Whether a manufacturer's products are safe
24 and reliable, and whether that manufacturer stands behind its products, are material
25 concerns to a consumer.

26 934. New GM actively concealed and/or suppressed these material facts, in
27 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
28 image and cost New GM money, and it did so at the expense of Plaintiffs and the

1 South Dakota Class.

2 935. On information and belief, New GM has still not made full and adequate
3 disclosure and continues to defraud Plaintiffs and the South Dakota Class and
4 conceal material information regarding defects that exist in the class vehicles.

5 936. Plaintiffs and the South Dakota Class were unaware of these omitted
6 material facts and would not have acted as they did if they had known of the
7 concealed and/or suppressed facts, in that they would not have purchased cars
8 manufactured by New GM; and/or they would not have purchased cars manufactured
9 by Old GM in the time after New GM had come into existence and had fraudulently
10 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
11 not have continued to drive their vehicles or would have taken other affirmative
12 steps. Plaintiffs' and the South Dakota Class's actions were justified. New GM was
13 in exclusive control of the material facts and such facts were not known to the public,
14 Plaintiffs, or the South Dakota Class.

15 937. Because of the concealment and/or suppression of the facts, Plaintiffs
16 and the South Dakota Class sustained damage because they own vehicles that
17 diminished in value as a result of New GM's concealment of, and failure to timely
18 disclose, the serious defects in the class vehicles and the quality issues engendered
19 by New GM's corporate policies. Had they been aware of the defects that existed in
20 the class vehicles, Plaintiffs who purchased new or Certified Previously Owned
21 vehicles after New GM came into existence either would have paid less for their
22 vehicles or would not have purchased or leased them at all; and no Plaintiffs
23 regardless of time of purchase or lease would have maintained their vehicles.

24 938. The value of all South Dakota Class Members' vehicles has diminished
25 as a result of New GM's fraudulent concealment of the defects which have greatly
26 tarnished the Corvette brand and made any reasonable consumer reluctant to
27 purchase any of the class vehicles, let alone pay what otherwise would have been fair
28 market value for the vehicles.

939. Accordingly, New GM is liable to the South Dakota Class for damages in an amount to be proven at trial.

940. New GM's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the South Dakota Class's rights and well-being to enrich New GM. New GM's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT LXIV

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (S.D.)

CODIFIED LAWS § 57A-2-314)

941. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

942. This claim is brought only on behalf of South Dakota residents who are members of the Nationwide Class (the “South Dakota Class”).

943. New GM was a merchant with respect to motor vehicles.

944. South Dakota law imposed a warranty that the class vehicles were in merchantable condition when Plaintiffs and the South Dakota Class purchased or leased their class vehicles from New GM on or after July 11, 2009.

945. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the class vehicles are inherently defective in that there are defects which cause inordinate and unusual early wear and failure of engines.

946. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the South Dakota Class members have been damaged in an amount to be proven at trial.

11

11

11

**KNAPP,
PETERSEN
& CLARKE**

COUNT LXV

THIRD-PARTY BENEFICIARY CLAIM

947. Plaintiffs reallege and incorporate by reference all paragraphs as though
fully set forth herein.

948. This claim is brought only on behalf of the Class members who are
South Dakota residents (the “South Dakota Class”).

949. In the Sales Agreement through which New GM acquired substantially
all of the assets of New GM, New GM explicitly agreed as follows:

From and after the Closing, [New GM] shall comply with the
certification, reporting and recall requirements of the National Traffic
and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
Recall Enhancement, Accountability and Documentation Act, the Clean
Air Act, the California Health and Safety Code and similar Laws, in
each case, to the extent applicable in respect of vehicles and vehicle
parts manufactured or distributed by [Old GM].

950. With the exception of the portion of the agreement that purports to
immunize New GM from its own independent misconduct with respect to cars and
parts made by Old GM, the Sales Agreement is a valid and binding contract.

951. But for New GM’s covenant to comply with the TREAD Act with
respect to cars and parts made by Old GM, the TREAD Act would have no
application to New GM with respect to those cars and parts. That is because the
TREAD Act on its face imposes reporting and recall obligations only on the
“manufacturers” of a vehicle. 49 U.S.C. § 30118(c).

952. Because New GM agreed to comply with the TREAD Act with respect
to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
make quarterly submissions to NHTSA of “early warning reporting” data, including
incidents property damage, warranty claims, consumer complaints, and field reports
concerning failure, malfunction, lack of durability or other performance issues. See

1 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all underlying
2 records on which the early warning reports are based and all records containing
3 information on malfunctions that may be related to motor vehicle safety. See 49
4 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows or
5 should know that a safety defect exists — including notifying NHTSA and
6 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
7 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

8 953. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
9 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
10 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
11 benefit of having a manufacturer responsible for monitoring the safety of their Old
12 GM vehicles and making certain that any known safety defects would be promptly
13 remedied.

14 954. Although the Sale Order which consummated New GM's purchase of
15 Old GM purported to give New GM immunity from claims concerning vehicles or
16 parts made by Old GM, the bankruptcy court recently ruled that provision to be
17 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
18 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
19 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
20 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
21 breaches of the promise it made in the Sale Agreement.

22 955. New GM breached its covenant to comply with the TREAD Act with
23 respect to the class vehicles, as it failed to take action to remediate the defects at any
24 time, up to the present.

25 956. Plaintiffs and the South Dakota Class were damaged as a result of New
26 GM's breach. Because of New GM's failure to timely remedy the defects in class
27 vehicle, the value of Old GM class vehicles has diminished in an amount to be
28 determined at trial.

COUNT LXVI

UNJUST ENRICHMENT

957. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

958. This claim is brought on behalf of members of the South Dakota Class who purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period after New GM came into existence, and who purchased or leased vehicles in the time period before New GM came into existence, which cars were still on the road after New GM came into existence (the “South Dakota Unjust Enrichment Class”).

959. New GM has received and retained a benefit from the Plaintiffs and inequity has resulted.

960. New GM has benefitted from selling and leasing defective cars, including Certified Pre-Owned cars, whose value was artificially inflated by New GM's concealment of defect issues that plagued the class vehicles, for more than they were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to pay other costs.

961. With respect to the class vehicles purchased before New GM came into existence that were still on the road after New GM came into existence and as to which New GM had unjustly and unlawfully determined not to recall, New GM benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted from its statements about the success of New GM.

962. Thus, all South Dakota Unjust Enrichment Class Members conferred a benefit on New GM.

963. It is inequitable for New GM to retain these benefits.

964. Plaintiffs were not aware about the true facts about class vehicles, and did not benefit from GM's conduct.

965. New GM knowingly accepted the benefits of its unjust conduct.

1 966. As a result of New GM's conduct, the amount of its unjust enrichment
2 should be disgorged, in an amount according to proof.

3 Tennessee

4 **COUNT LXVII**

5 **VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT**
6 **(TENN. CODE ANN. § 47-18-101, et seq.)**

7 967. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 968. This claim is brought only on behalf of Nationwide Class Members who
10 are Tennessee residents (the "Tennessee Class").

11 969. Plaintiffs and the Tennessee Class are "natural persons" and
12 "consumers" within the meaning of TENN. CODE ANN. § 47-18-103(2).

13 970. New GM is a "person" within the meaning of TENN. CODE ANN. §
14 47-18-103(2).

15 971. New GM's conduct complained of herein affected "trade," "commerce"
16 or "consumer transactions" within the meaning of TENN. CODE ANN. § 47-18-
17 103(19).

18 972. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits
19 "[u]nfair or deceptive acts or practices affecting the conduct of any trade or
20 commerce," including but not limited to: "Representing that goods or services have
21 ... characteristics, [or] ... benefits ... that they do not have...;" "Representing that
22 goods or services are of a particular standard, quality or grade... if they are of
23 another;" and "Advertising goods or services with intent not to sell them as
24 advertised." TENN. CODE ANN. § 47-18-104. New GM violated the Tennessee
25 CPA by engaging in unfair or deceptive acts, including representing that class
26 vehicles have characteristics or benefits that they did not have; representing that class
27 vehicles are of a particular standard, quality, or grade when they are of another; and
28 advertising class vehicles with intent not to sell them as advertised.

1 973. In the course of its business, New GM systematically devalued safety
2 and concealed defects in the class vehicles as described herein and otherwise
3 engaged in activities with a tendency or capacity to deceive. New GM also engaged
4 in unlawful trade practices by employing deception, deceptive acts or practices,
5 fraud, misrepresentations, or concealment, suppression or omission of any material
6 fact with intent that others rely upon such concealment, suppression or omission, in
7 connection with the sale of class vehicles.

8 974. From the date of its inception on July 11, 2009, New GM knew of many
9 serious defects affecting many models and years of the class vehicles, because of (i)
10 the knowledge of Old GM personnel who remained at New GM; (ii) continuous
11 reports, investigations, and notifications from regulatory authorities; and (iii)
12 ongoing performance of New GM's TREAD Act obligations, as discussed above.
13 New GM became aware of other serious defects and systemic safety issues years
14 ago, but concealed all of that information.

15 975. New GM was also aware that it valued cost-cutting over safety, selected
16 parts from the cheapest supplier regardless of quality, and actively discouraged
17 employees from finding and flagging known safety defects, and that this approach
18 would necessarily cause the existence of more defects in the vehicles it designed and
19 manufactured and the failure to disclose and remedy defects in all the class vehicles.
20 New GM concealed this information as well.

21 976. By failing to disclose and by actively concealing the many defects in the
22 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
23 presenting itself as a reputable manufacturer that valued safety and stood behind its
24 vehicles after they were sold, New GM engaged in unfair and deceptive business
25 practices in violation of the Tennessee CPA.

26 977. In the course of New GM's business, it willfully failed to disclose and
27 actively concealed the dangerous risk posed by the defects discussed above. New
28 GM compounded the deception by repeatedly asserting that the class vehicles were

1 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
2 that valued safety and stood behind its vehicles once they are on the road.

3 978. New GM's unfair or deceptive acts or practices were likely to and did in
4 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
5 reliability of the class vehicles, the quality of the GM brand, the devaluing of safety
6 at New GM, and the true value of the class vehicles.

7 979. New GM intentionally and knowingly misrepresented material facts
8 regarding the class vehicles with an intent to mislead Plaintiffs and the Tennessee
9 Class.

10 980. New GM knew or should have known that its conduct violated the
11 Tennessee CPA.

12 981. As alleged above, New GM made material statements about the safety
13 and reliability of the class vehicles and the GM brand that were either false or
14 misleading.

15 982. New GM owed Plaintiffs a duty to disclose the true safety and reliability
16 of the class vehicles and the devaluing of safety at New GM, because New GM:

17 (a) Possessed exclusive knowledge that it valued cost-cutting over
18 safety, selected parts from the cheapest supplier regardless of quality, and actively
19 discouraged employees from finding and flagging known safety defects, and that this
20 approach would necessarily cause the existence of more defects in the vehicles it
21 designed and manufactured;

22 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

23 (c) Made incomplete representations about the safety and reliability
24 of the class vehicles generally, and the valve guide defects in particular, while
25 purposefully withholding material facts from Plaintiffs that contradicted these
26 representations.

27 983. Because New GM fraudulently concealed the defects in the class
28 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma

1 attached to those vehicles by New GM's conduct, they are now worth significantly
2 less than they otherwise would be.

3 984. New GM's systemic devaluation of safety and its concealment of the
4 defects in the class vehicles were material to Plaintiffs and the Tennessee Class. A
5 vehicle made by a reputable manufacturer of vehicles is worth more than an
6 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
7 conceals defects rather than promptly remedies them.

8 985. Plaintiffs and the Tennessee Class suffered ascertainable loss caused by
9 New GM's misrepresentations and its concealment of and failure to disclose material
10 information. Plaintiffs who purchased class vehicles after the date of New GM's
11 inception either would have paid less for their vehicles or would not have purchased
12 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
13 of New GM's misconduct.

14 986. Regardless of time of purchase or lease, no Plaintiffs would have
15 maintained and continued to drive their vehicles had they been aware of New GM's
16 misconduct. By contractually assuming TREAD Act responsibilities with respect to
17 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
18 those vehicles because the TREAD Act on its face only applies to vehicle
19 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
20 vehicle owners to refrain from unfair and deceptive acts or practices under the
21 Tennessee CPA. And, in any event, all class vehicle owners suffered ascertainable
22 loss in the form of the diminished value of their vehicles as a result of New GM's
23 deceptive and unfair acts and practices that occurred in the course of New GM's
24 business.

25 987. As a direct and proximate result of New GM's violations of the
26 Tennessee CPA, Plaintiffs and the Tennessee Class have suffered injury-in-fact
27 and/or actual damage.

28 988. Pursuant to TENN. CODE § 47-18-109(a), Plaintiffs and the Tennessee

1 Class seek monetary relief against New GM measured as actual damages in an
2 amount to be determined at trial, treble damages as a result of New GM's willful or
3 knowing violations, and any other just and proper relief available under the
4 Tennessee CPA.

5 **COUNT LXVIII**

6 **FRAUD BY CONCEALMENT**

7 989. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 990. This claim is brought on behalf of Nationwide Class Members who are
10 Tennessee residents (the "Tennessee Class").

11 991. New GM concealed and suppressed material facts concerning the
12 quality of the class vehicles.

13 992. New GM concealed and suppressed material facts concerning the
14 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
15 studious avoidance of quality issues, and a shoddy design process.

16 993. New GM concealed and suppressed material facts concerning the
17 defects in the class vehicles, and that it valued cost-cutting over quality and took
18 steps to ensure that its employees did not reveal known defects to regulators or
19 consumers.

20 994. New GM did so in order to boost confidence in its vehicles and falsely
21 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
22 that New GM was a reputable manufacturer that stands behind its vehicles after they
23 are sold and that its vehicles are safe and reliable. The false representations were
24 material to consumers, both because they concerned the quality and safety of the
25 class vehicles and because the representations played a significant role in the value of
26 the vehicles.

27 995. New GM had a duty to disclose the defects in the class vehicles because
28 they were known and/or accessible only to New GM, were in fact known to New

1 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
2 superior knowledge and access to the facts, and New GM knew the facts were not
3 known to or reasonably discoverable by Plaintiffs and the Tennessee Class. New GM
4 also had a duty to disclose because it made many general affirmative representations
5 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
6 were misleading, deceptive and incomplete without the disclosure of the additional
7 facts set forth above regarding defects in the class vehicles. Having volunteered to
8 provide information to Plaintiffs, GM had the duty to disclose not just the partial
9 truth, but the entire truth. These omitted and concealed facts were material because
10 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
11 and the Tennessee Class.

12 996. New GM actively concealed and/or suppressed these material facts, in
13 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
14 image and cost New GM money, and it did so at the expense of Plaintiffs and the
15 Tennessee Class.

16 997. On information and belief, New GM has still not made full and adequate
17 disclosure and continues to defraud Plaintiffs and the Tennessee Class and conceal
18 material information regarding defects that exist in the class vehicles.

19 998. Plaintiffs and the Tennessee Class were unaware of these omitted
20 material facts and would not have acted as they did if they had known of the
21 concealed and/or suppressed facts, in that they would not have purchased cars
22 manufactured by New GM; and/or they would not have purchased cars manufactured
23 by Old GM in the time after New GM had come into existence and had fraudulently
24 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
25 not have continued to drive their vehicles or would have taken other affirmative
26 steps. Plaintiffs' and the Tennessee Class's actions were justified. New GM was in
27 exclusive control of the material facts and such facts were not known to the public,
28 Plaintiffs, or the Tennessee Class.

1 999. Because of the concealment and/or suppression of the facts, Plaintiffs
2 and the Tennessee Class sustained damage because they own vehicles that
3 diminished in value as a result of New GM's concealment of, and failure to timely
4 disclose, the defects in the class vehicles and the quality issues engendered by New
5 GM's corporate policies. Had they been aware of the defects that existed in the class
6 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
7 New GM came into existence either would have paid less for their vehicles or would
8 not have purchased or leased them at all; and no Plaintiffs regardless of time of
9 purchase or lease would have maintained their vehicles.

10 1000. The value of all Tennessee Class Members' vehicles has diminished as a
11 result of New GM's fraudulent concealment of the defects which have tarnished the
12 Corvette brand and made any reasonable consumer reluctant to purchase any of the
13 class vehicles, let alone pay what otherwise would have been fair market value for
14 the vehicles.

15 1001. Accordingly, New GM is liable to the Tennessee Class for damages in
16 an amount to be proven at trial.

17 1002. New GM's acts were done maliciously, oppressively, deliberately, with
18 intent to defraud, and in reckless disregard of Plaintiffs' and the Tennessee Class's
19 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
20 of punitive damages in an amount sufficient to deter such conduct in the future,
21 which amount is to be determined according to proof.

COUNT LXIX

THIRD-PARTY BENEFICIARY CLAIM

24 1003. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.

1004. This claim is brought only on behalf of Class members who are
Tennessee residents (the “Tennessee Class”).

28 1005. In the Sales Agreement through which New GM acquired substantially

1 all of the assets of New GM, New GM explicitly agreed as follows:

2 From and after the Closing, [New GM] shall comply with the
3 certification, reporting and recall requirements of the National Traffic
4 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
5 Recall Enhancement, Accountability and Documentation Act, the Clean
6 Air Act, the California Health and Safety Code and similar Laws, in
7 each case, to the extent applicable in respect of vehicles and vehicle
8 parts manufactured or distributed by [Old GM].

9 1006. With the exception of the portion of the agreement that purports to
10 immunize New GM from its own independent misconduct with respect to cars and
11 parts made by Old GM, the Sales Agreement is a valid and binding contract.

12 1007. But for New GM's covenant to comply with the TREAD Act with
13 respect to cars and parts made by Old GM, the TREAD Act would have no
14 application to New GM with respect to those cars and parts. That is because the
15 TREAD Act on its face imposes reporting and recall obligations only on the
16 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

17 1008. Because New GM agreed to comply with the TREAD Act with respect
18 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a) make quarterly submissions to NHTSA of "early warning reporting" data, including incidents involving property damage, warranty claims, consumer complaints, and field reports concerning failure, malfunction, lack of durability or other performance issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all underlying records on which the early warning reports are based and all records containing information on malfunctions that may be related to motor vehicle safety. See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows or should know that a safety defect exists – including notifying NHTSA and consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. § 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

1 1009. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
2 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
3 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
4 benefit of having a manufacturer responsible for monitoring the safety of their Old
5 GM vehicles and making certain that any known defects would be promptly
6 remedied.

7 1010. Although the Sale Order which consummated New GM's purchase of
8 Old GM purported to give New GM immunity from claims concerning vehicles or
9 parts made by Old GM, the bankruptcy court recently ruled that provision to be
10 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
11 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
12 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
13 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
14 breaches of the promise it made in the Sale Agreement.

15 1011. New GM breached its covenant to comply with the TREAD Act with
16 respect to the class vehicles, as it failed to take action to remediate the defects at any
17 time, up to the present.

18 1012. Plaintiffs and the Tennessee Class were damaged as a result of New
19 GM's breach. Because of New GM's failure to timely remedy the defect in class
20 vehicles, the value of the Old GM class vehicles has diminished in an amount to be
21 determined at trial.

COUNT LXX

UNJUST ENRICHMENT

24 1013. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.

1014. This claim is brought on behalf of members of the Tennessee Class who purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period after New GM came into existence, and who purchased or leased class vehicles in the

1 time period before New GM came into existence, which cars were still on the road
2 after New GM came into existence (the “Tennessee Unjust Enrichment Class”).

3 1015. New GM has received and retained a benefit from the Plaintiffs and
4 inequity has resulted.

5 1016. New GM has benefitted from selling and leasing defective cars,
6 including Certified Pre-Owned cars, whose value was artificially inflated by New
7 GM’s concealment of defect issues that plagued class vehicles, for more than they
8 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
9 pay other costs.

10 1017. With respect to the class vehicles purchased before New GM came into
11 existence that were still on the road after New GM came into existence and as to
12 which New GM had unjustly and unlawfully determined not to recall, New GM
13 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
14 from its statements about the success of New GM.

15 1018. Thus, all Tennessee Unjust Enrichment Class Members conferred a
16 benefit on New GM.

17 1019. It is inequitable for New GM to retain these benefits.

18 1020. Plaintiffs were not aware about the true facts about class vehicles, and
19 did not benefit from GM’s conduct.

20 1021. New GM knowingly accepted the benefits of its unjust conduct.

21 1022. As a result of New GM’s conduct, the amount of its unjust enrichment
22 should be disgorged, in an amount according to proof.

23 **Texas**

24 **COUNT LXXI**

25 **VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES –**
26 **CONSUMER PROTECTION ACT**

27 **(TEX. BUS. & COM. CODE §§ 17.41, et seq.)**

28 1023. Plaintiffs reallege and incorporate by reference all paragraphs as though

1 fully set forth herein.

2 1024. This claim is brought only on behalf of Nationwide Class members who
3 are Texas residents (the “Texas Class”).

4 1025. Plaintiffs and the Texas Class are individuals, partnerships and
5 corporations with assets of less than \$25 million (or are controlled by corporations or
6 entities with less than \$25 million in assets). See TEX. BUS. & COM. CODE §
7 17.41.

8 1026. The Texas Deceptive Trade Practices-Consumer Protection Act (“Texas
9 DTPA”) provides a private right of action to a consumer where the consumer suffers
10 economic damage as the result of either (i) the use of false, misleading or deceptive
11 act or practice specifically enumerated in TEX. BUS. & COM. CODE § 17.46(b);
12 (ii) “breach of an express or implied warranty” or (iii) “an unconscionable action or
13 course of action by any person.” TEX. BUS. & COM. CODE § 17.50(a)(2) & (3).

14 1027. An “unconscionable action or course of action,” means “an act or
15 practice which, to a consumer’s detriment, takes advantage of the lack of knowledge,
16 ability, experience, or capacity of the consumer to a grossly unfair degree.” TEX.
17 BUS. & COM. CODE § 17.45(5). As detailed herein, New GM has engaged in an
18 unconscionable action or course of action and thereby caused economic damages to
19 the Texas Class.

20 1028. New GM has also breached the implied warranty of merchantability
21 with respect to the Texas Class, as set forth in Texas Count III below.

22 1029. New GM has also violated the specifically enumerated provisions of
23 TEX. BUS. & COM. CODE § 17.46(b) by, at a minimum: (1) representing that the
24 class vehicles have characteristics, uses, benefits, and qualities which they do not
25 have; (2) representing that the class vehicles are of a particular standard, quality, and
26 grade when they are not; (3) advertising the class vehicles with the intent not to sell
27 them as advertised; (4) failing to disclose information concerning the class vehicles
28 with the intent to induce consumers to purchase or lease the class vehicles.

1 1030. In the course of its business, New GM systematically devalued safety
2 and concealed defects in the class vehicles as described herein and otherwise
3 engaged in activities with a tendency or capacity to deceive. New GM also engaged
4 in unlawful trade practices by employing deception, deceptive acts or practices,
5 fraud, misrepresentations, or concealment, suppression or omission of any material
6 fact with intent that others rely upon such concealment, suppression or omission, in
7 connection with the sale of the class vehicles.

8 1031. From the date of its inception on July 11, 2009, New GM knew of many
9 serious defects affecting many models and years of the class vehicles, because of (i)
10 the knowledge of Old GM personnel who remained at New GM; (ii) continuous
11 reports, investigations, and notifications from regulatory authorities; and (iii)
12 ongoing performance of New GM's TREAD Act obligations. New GM became
13 aware of other serious defects and systemic safety issues years ago, but concealed all
14 of that information.

15 1032. New GM was also aware that it valued cost-cutting over safety, selected
16 parts from the cheapest supplier regardless of quality, and actively discouraged
17 employees from finding and flagging known safety defects, and that this approach
18 would necessarily cause the existence of more defects in the vehicles it designed and
19 manufactured and the failure to disclose and remedy defects in all the class vehicles.
20 New GM concealed this information as well.

21 1033. By failing to disclose and by actively concealing the many defects in the
22 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
23 presenting itself as a reputable manufacturer that valued safety and stood behind its
24 vehicles after they were sold, New GM engaged in deceptive and unconscionable
25 business practices in violation of the Texas DTPA.

26 1034. In the course of New GM's business, it willfully failed to disclose and
27 actively concealed the dangerous risk posed by the defects discussed above. New
28 GM compounded the deception by repeatedly asserting that the class vehicles were

1 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
2 that valued safety and stood behind its vehicles once they are on the road.

3 1035. New GM's unfair or deceptive acts or practices were likely to and did in
4 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
5 reliability of the class vehicles, the quality of the GM brand, the devaluing of safety
6 at New GM, and the true value of the class vehicles.

7 1036. New GM intentionally and knowingly misrepresented material facts
8 regarding the class vehicles with the intent to mislead Plaintiffs and the Texas Class.

9 1037. New GM knew or should have known that its conduct violated the
10 Texas DTPA.

11 1038. As alleged above, New GM made material statements about the safety
12 and reliability of the class vehicles and the GM brand that were either false or
13 misleading.

14 1039. New GM owed Plaintiffs a duty to disclose the true safety and reliability
15 of the class vehicles and the devaluing of safety at New GM, because New GM:

16 (a) Possessed exclusive knowledge that it valued cost-cutting over
17 safety, selected parts from the cheapest supplier regardless of quality, and actively
18 discouraged employees from finding and flagging known safety defects, and that this
19 approach would necessarily cause the existence of more defects in the vehicles it
20 designed and manufactured;

21 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

22 (c) Made incomplete representations about the safety and reliability
23 of the class vehicles generally, and the valve guide defects in particular, while
24 purposefully withholding material facts from Plaintiffs that contradicted these
25 representations.

26 1040. Because New GM fraudulently concealed the defects in the class
27 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
28 attached to those vehicles by New GM's conduct, they are now worth significantly

1 less than they otherwise would be.

2 1041. New GM's systemic devaluation of safety and its concealment of the
3 defects in the class vehicles were material to Plaintiffs and the Texas Class. A
4 vehicle made by a reputable manufacturer of vehicles is worth more than an
5 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
6 conceals defects rather than promptly remedying them.

7 1042. Plaintiffs and the Texas Class suffered ascertainable loss caused by New
8 GM's misrepresentations and its concealment of and failure to disclose material
9 information. Plaintiffs who purchased class vehicles after the date of New GM's
10 inception either would have paid less for their vehicles or would not have purchased
11 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
12 of New GM's misconduct. Under TEX. BUS. & COM. CODE § 17.50(b)(1),
13 Plaintiffs are entitled to recover such economic damages.

14 1043. As set forth above and in Texas Count III below, New GM breached of
15 the implied warranty of merchantability with respect to the Texas Class, and engaged
16 in that unconscionable actions and unconscionable course of action "knowingly,"
17 which means it did so with "actual awareness of the fact of the act, practice,
18 condition, defect or failure constituting the breach of warranty" and with "actual
19 awareness, at the time of the act or practice complained of, of the falsity, deception
20 or unfairness of the act or practice giving rise to the consumer's claim...." TEX.
21 BUS. & COM. CODE § 17.45(9). Accordingly, pursuant to TEX. BUS. COM.
22 CODE § 17.50(b)(1), Members of the Texas Class are entitled to additional damages
23 in an amount up to three times the amount of economic damages.

24 1044. Regardless of time of purchase or lease, no Plaintiffs would have
25 maintained and continued to drive their vehicles. By contractually assuming TREAD
26 Act responsibilities with respect to Old GM class vehicles, New GM effectively
27 assumed the role of manufacturer of those vehicles because the TREAD Act on its
28 face only applies to vehicle manufacturers. 49 U.S.C. § 30118(c). New GM had an

1 ongoing duty to all GM vehicle owners to refrain from unfair and deceptive acts or
2 practices under the Texas DTPA. And, in any event, all class vehicle owners
3 suffered ascertainable loss in the form of the diminished value of their vehicles as a
4 result of New GM's deceptive and unfair acts and practices that occurred in the
5 course of New GM's business.

6 1045. Pursuant to TEX. BUS. & COM. CODE § 17.50(a)(1) and (b), Plaintiffs
7 and the Texas Class seek monetary relief against New GM measured as actual
8 damages in an amount to be determined at trial, treble damages for New GM's
9 knowing violations of the Texas DTPA, and any other just and proper relief available
10 under the Texas DTPA.

11 1046. Alternatively, or additionally, pursuant to TEX. BUS. & COM. CODE §
12 17.50(b)(3) & (4), Plaintiffs and the Texas Class and all other Texas Class members
13 who purchased vehicles from New GM on or after July 11, 2009 are entitled to
14 disgorgement or to rescission or to any other relief necessary to restore any money or
15 property that was acquired from them based on violations of the Texas DTPA or
16 which the Court deems proper.

17 1047. The Texas Plaintiffs and the Texas Class also are also entitled to recover
18 court costs and reasonable and necessary attorneys' fees under § 17.50(d) of the
19 Texas DTPA.

20 **COUNT LXXII**

21 **FRAUD BY CONCEALMENT**

22 1048. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 1049. This claim is brought on behalf of Nationwide Class Members who are
25 Texas residents (the "Texas Class").

26 1050. New GM concealed and suppressed material facts concerning the
27 quality of the class vehicles.

28 1051. New GM concealed and suppressed material facts concerning the

1 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
2 studious avoidance of quality issues, and a shoddy design process.

3 1052. New GM concealed and suppressed material facts concerning the
4 defects in the class vehicles, and that it valued cost-cutting over quality and took
5 steps to ensure that its employees did not reveal known defects to regulators or
6 consumers.

7 1053. New GM did so in order to boost confidence in its vehicles and falsely
8 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
9 that New GM was a reputable manufacturer that stands behind its vehicles after they
10 are sold and that its vehicles are safe and reliable. The false representations were
11 material to consumers, both because they concerned the quality and safety of the
12 class vehicles and because the representations played a significant role in the value of
13 the vehicles.

14 1054. New GM had a duty to disclose the defects in the class vehicles because
15 they were known and/or accessible only to New GM, were in fact known to New
16 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
17 superior knowledge and access to the facts, and New GM knew the facts were not
18 known to or reasonably discoverable by Plaintiffs and the Texas Class. New GM also
19 had a duty to disclose because it made many general affirmative representations
20 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
21 were misleading, deceptive and incomplete without the disclosure of the additional
22 facts set forth above regarding defects in the class vehicles. Having volunteered to
23 provide information to Plaintiffs, GM had the duty to disclose not just the partial
24 truth, but the entire truth. These omitted and concealed facts were material because
25 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
26 and the Texas Class.

27 1055. New GM actively concealed and/or suppressed these material facts, in
28 whole or in part, to protect its profits and avoid recalls that would hurt the brand's

1 image and cost New GM money, and it did so at the expense of Plaintiffs and the
2 Texas Class.

3 1056. On information and belief, New GM has still not made full and adequate
4 disclosure and continues to defraud Plaintiffs and the Texas Class and conceal
5 material information regarding defects that exist in the class vehicles.

6 1057. Plaintiffs and the Texas Class were unaware of these omitted material
7 facts and would not have acted as they did if they had known of the concealed and/or
8 suppressed facts, in that they would not have purchased cars manufactured by New
9 GM; and/or they would not have purchased cars manufactured by Old GM in the
10 time after New GM had come into existence and had fraudulently opted to conceal,
11 and to misrepresent, the true facts about the vehicles; and/or would not have
12 continued to drive their vehicles or would have taken other affirmative steps.
13 Plaintiffs' and the Texas Class's actions were justified. New GM was in exclusive
14 control of the material facts and such facts were not known to the public, Plaintiffs,
15 or the Texas Class.

16 1058. Because of the concealment and/or suppression of the facts, Plaintiffs
17 and the Texas Class sustained damage because they own vehicles that diminished in
18 value as a result of New GM's concealment of, and failure to timely disclose, the
19 defects in the class vehicles and the quality issues engendered by New GM's
20 corporate policies. Had they been aware of the defects that existed in the class
21 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
22 New GM came into existence either would have paid less for their vehicles or would
23 not have purchased or leased them at all; and no Plaintiffs regardless of time of
24 purchase or lease would have maintained their vehicles.

25 1059. The value of all Texas Class Members' vehicles has diminished as a
26 result of New GM's fraudulent concealment of the defects which have tarnished the
27 Corvette brand and made any reasonable consumer reluctant to purchase any of the
28 class vehicles, let alone pay what otherwise would have been fair market value for

1 the vehicles.

2 1060. Accordingly, New GM is liable to the Texas Class for damages in an
3 amount to be proven at trial.

4 1061. New GM's acts were done maliciously, oppressively, deliberately, with
5 intent to defraud, and in reckless disregard of Plaintiffs' and the Texas Class's rights
6 and well-being to enrich New GM. New GM's conduct warrants an assessment of
7 punitive damages in an amount sufficient to deter such conduct in the future, which
8 amount is to be determined according to proof.

9 **COUNT LXXIII**

10 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

11 **(TEX. BUS. & COM. CODE § 2.314)**

12 1062. Plaintiffs reallege and incorporate by reference all paragraphs as though
13 fully set forth herein.

14 1063. This claim is brought only on behalf of the Texas Class.

15 1064. New GM was a merchant with respect to motor vehicles under TEX.
16 BUS. & COM. CODE § 2.104.

17 1065. Under TEX. BUS. & COM. CODE § 2.314, a warranty that the class
18 vehicles were in merchantable condition was implied by law in the transaction in
19 which Plaintiffs and the Texas Class purchased or leased their class vehicles from
20 New GM on or after July 11, 2009.

21 1066. New GM impliedly warranted that the vehicles were of good and
22 merchantable quality and fit, and safe for their ordinary intended use – transporting
23 the driver and passengers in reasonable safety during normal operation, and without
24 unduly endangering them or members of the public.

25 1067. These vehicles, when sold and at all times thereafter, were not
26 merchantable and are not fit for the ordinary purpose for which cars are used.
27 Specifically, the class vehicles are inherently defective in that there are defects in the
28 engine that result in premature unusual wear and catastrophic failure.

1068. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Texas Class have been damaged in an amount to be proven at trial.

COUNT LXXIV

THIRD-PARTY BENEFICIARY CLAIM

1069. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1070. This claim is brought only on behalf of Texas Class.

9 1071. In the Sales Agreement through which New GM acquired substantially
10 all of the assets of New GM, New GM explicitly agreed as follows:

From and after the Closing, [New GM] shall comply with the certification, reporting and recall requirements of the National Traffic and Motor Vehicle and Motor Vehicle Safety Act, the Transportation Recall Enhancement, Accountability and Documentation Act, the Clean Air Act, the California Health and Safety Code and similar Laws, in each case, to the extent applicable in respect of vehicles and vehicle parts manufactured or distributed by [Old GM].

18 1072. With the exception of the portion of the agreement that purports to
19 immunize New GM from its own independent misconduct with respect to cars and
20 parts made by Old GM, the Sales Agreement is a valid and binding contract.

1073. But for New GM's covenant to comply with the TREAD Act with
respect to cars and parts made by Old GM, the TREAD Act would have no
application to New GM with respect to those cars and parts. That is because the
TREAD Act on its face imposes reporting and recall obligations only on the
“manufacturers” of a vehicle. 49 U.S.C. § 30118(c).

1074. Because New GM agreed to comply with the TREAD Act with respect
to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
make quarterly submissions to NHTSA of “early warning reporting” data, including

1 incidents involving property damage, warranty claims, consumer complaints, and
2 field reports concerning failure, malfunction, lack of durability or other performance
3 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
4 underlying records on which the early warning reports are based and all records
5 containing information on malfunctions that may be related to motor vehicle safety.
6 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
7 or should know that a safety defect exists – including notifying NHTSA and
8 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
9 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

10 1075. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
11 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
12 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
13 benefit of having a manufacturer responsible for monitoring the safety of their Old
14 GM vehicles and making certain that any known defects would be promptly
15 remedied.

16 1076. Although the Sale Order which consummated New GM's purchase of
17 Old GM purported to give New GM immunity from claims concerning vehicles or
18 parts made by Old GM, the bankruptcy court recently ruled that provision to be
19 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
20 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
21 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
22 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
23 breaches of the promise it made in the Sale Agreement.

24 1077. New GM breached its covenant to comply with the TREAD Act with
25 respect to the class vehicles, as it failed to take action to remediate the defects at any
26 time, up to the present.

27 1078. Plaintiffs and the Texas Class were damaged as a result of New GM's
28 breach. Because of New GM's failure to timely remedy the defect in the class

1 vehicles, the value of Old GM class vehicles has diminished in an amount to be
2 determined at trial.

3 **COUNT LXXV**
4 **UNJUST ENRICHMENT**

5 1079. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 1080. This claim is brought on behalf of members of the Texas Class who
8 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
9 after New GM came into existence, and who purchased or leased class vehicles in the
10 time period before New GM came into existence, which cars were still on the road
11 after New GM came into existence.

12 1081. New GM has received and retained a benefit from the Plaintiffs and
13 inequity has resulted.

14 1082. New GM has benefitted from selling and leasing defective cars,
15 including Certified Pre-Owned cars, whose value was artificially inflated by New
16 GM's concealment of defect issues that plagued class vehicles, for more than they
17 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
18 pay other costs.

19 1083. With respect to the class vehicles purchased before New GM came into
20 existence that were still on the road after New GM came into existence and as to
21 which New GM had unjustly and unlawfully determined not to recall, New GM
22 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
23 from its statements about the success of New GM.

24 1084. Thus, Texas Class members conferred a benefit on New GM.

25 1085. It is inequitable for New GM to retain these benefits.

26 1086. Plaintiffs were not aware about the true facts about class vehicles, and
27 did not benefit from GM's conduct.

28 1087. New GM knowingly accepted the benefits of its unjust conduct.

1088. As a result of New GM's conduct, the amount of its unjust enrichment should be disgorged, in an amount according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully request that this Court enter a judgment against New GM and in favor of Plaintiffs and the Class, and grant the following relief:

7 1. Determine that this action may be maintained as a class action and
8 certify it as such under Rule 23(b)(2) and/or 23(b)(3), or alternatively certify all
9 issues and claims that are appropriately certified under Rule 23(c)(4); and designate
10 and appoint Plaintiffs as Class Representatives and Plaintiffs' chosen counsel as
11 Class Counsel;

12 2. Declare, adjudge, and decree the conduct of New GM as alleged herein
13 to be unlawful, unfair, and/or deceptive and otherwise in violation of law, enjoin any
14 such future conduct;

15 3. Award Plaintiffs and Class Members actual, compensatory damages or,
16 in the alternative, statutory damages, as proven at trial;

17 4. Award Plaintiffs and the Class Members exemplary damages in such
18 amount as proven;

19 5. Award damages and other remedies, including, but not limited to,
20 statutory penalties, as allowed by any applicable law, such as the consumer laws of
21 the various states;

22 6. Award Plaintiffs and the Class Members their reasonable attorneys'
23 fees, costs, and pre-judgment and post-judgment interest;

24 7. Declare, adjudge and decree that Defendant violated 18 U.S.C. §§
25 1962(c) and (d) by conducting the affairs of the RICO Enterprise through a pattern of
26 racketeering activity and conspiring to do so;

27 8. Award Plaintiffs and the nation-wide Class Members treble damages
28 pursuant to 18 U.S.C. § 1964(c);

1 9. Award Plaintiffs and Class Members restitution and/or disgorgement of
2 New GM's ill-gotten gains relating to the conduct described in this Complaint; and

3 10. Award Plaintiffs and the Class Members such other further and different
4 relief as the case may require or as determined to be just, equitable, and proper by
5 this Court.

6
7 Dated: December 22, 2015

KNAPP, PETERSEN & CLARKE

8
9 By: /s/ André E. Jardini
10 André E. Jardini

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individuals, on behalf of themselves
and all others similarly situated

KNAPP,
PETERSEN
& CLARKE

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28 ////

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury in the above-captioned matter.

Dated: December 22, 2015

KNAPP, PETERSEN & CLARKE

By: /s/ André E. Jardini

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